

**STATE AND LOCAL EFFORTS TO  
PROTECT SPECIES, JOBS,  
PROPERTY, AND MULTIPLE  
USE AMIDST A NEW WAR ON  
THE WEST PART 1 AND 2**

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**OVERSIGHT FIELD HEARING**

BEFORE THE

COMMITTEE ON NATURAL RESOURCES  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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Wednesday, September 4, 2013 (Part 1), in Casper, Wyoming  
Wednesday, September 4, 2013 (Part 2), in Billings, Montana

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**OVERSIGHT FIELD HEARING ON STATE AND  
LOCAL EFFORTS TO PROTECT SPECIES,  
JOBS, PROPERTY, AND MULTIPLE USE  
AMIDST A NEW WAR ON THE WEST PART 1**

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**Wednesday, September 4, 2013  
U.S. House of Representatives  
Committee on Natural Resources  
Casper, Wyoming**

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The committee met, pursuant to call, at 9 a.m., in Wyoming Oil and Gas Conservation Commission, 2211 King Boulevard, Casper, Wyoming, Hon. Doc Hastings [Chairman of the committee] presiding.

Present: Representatives Hastings, Lummis, Lamborn, and Daines.

The CHAIRMAN. The House Committee on Natural Resources will come to order. The committee is meeting today to hear testimony on the hearing entitled State and Local Efforts to Protect Species, Jobs, Property, and Multiple Use Amidst a New War on the West.

By way of introduction, I am Congressman Doc Hastings, and I live in Washington, in Washington State. I call it the real Washington. I spend part of my time every year back in Washington, DC, and my district runs throughout central Washington, and we are very familiar with the impacts of the Endangered Species Act in the Northwest. We are constantly at odds with it. Twenty years ago, Washington State as a whole was a—I won't say beneficiary but maybe a victim of the spotted owl. So I am familiar with that, and I am very pleased to be here in Casper, Wyoming today.

Before we start today's hearing, I want to recognize my colleague and your congresswoman from Wyoming, Cynthia Lummis.

Cynthia?

Mrs. LUMMIS. Well, thank you, Mr. Chairman.

I am so delighted that the Natural Resources Committee Chairman, Doc Hastings, has chosen to be here today, along with my colleagues, Representative Doug Lamborn of Colorado—welcome, Doug—and our neighbor Steve Daines from Montana. We are really pleased that you have chosen Casper and our State of Wyoming as one of the sites for this important field hearing.

Being that this is a congressional hearing, we are going to begin, as we do every session with the House of Representatives, with the posting of the colors and Pledge of Allegiance. So please join me in standing to recognize the Natrona County High School Mustang Battalion, who will post the colors; and Mr. Stan Low, a great American, who will lead us in the Pledge of Allegiance.

[Pledge of Allegiance.]

Mrs. LUMMIS. Well, thank you, Mustang Battalion; and thank you, Stan Low, for your service to our country and for being here today and leading us in the Pledge of Allegiance.

I now recognize City Council President Paul Meyer for a few welcoming words.

[No response.]

Mrs. LUMMIS. Not here. And on his behalf I will just say welcome, and I yield back to the Chairman.

The CHAIRMAN. With that, the way congressional hearings are held are typically we have opening statements by the Members and, of course, we will hear from the panel. Following hearing from the panel, there will be a round of questions from members of the committee.

We do have a timeframe because we have to go to Montana for a hearing up there, so we have to be out of here just before 11:00. If everything works well, we will do that.

I now recognize myself for my opening statement.

**STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON**

The CHAIRMAN. Today the Committee on Natural Resources continues its important oversight of the Endangered Species Act, with the goal of hearing specifically from an array of interests directly affected by the Endangered Species Act, and by that we mean States, local governments, sportsmen, and private property owners.

I am pleased to be here in Casper, Wyoming this morning with Congresswoman Lummis and my two colleagues, one from Montana, one from Colorado. Congresswoman Lummis and I are co-chairmen of the ESA Working Group. The Working Group is made up of Members from around the country who understand the need to carefully examine the Endangered Species Act. It is an act that has not been reauthorized for 25 years, and yet in that 25 years the lack of reauthorization in the roughly 15 years before that, the recovery rate of those species that are listed was 2 percent or less.

Already, this Working Group has received hundreds of comments from individuals seeking improvements to the ESA. In addition to this morning's hearing, later today the committee will be in Billings, as I mentioned, to hear from affected individuals there. In the coming weeks, the ESA Working Group will hold additional forums to ensure broader input from all States affected by this law.

Ramped-up ESA listings, previously the 2011 settlement and executive orders, and actions by litigious groups, are wreaking havoc on people affected by the ESA, and that includes multiple use of lands that were designed for multiple use, rural economies, energy development, and even some States' own species conservation activities. Rather than ensuring the Federal Government cooperates with States to the maximum extent practicable on major actions affecting land and water within the States' borders, this administration is allowing "sue and settle" to dictate how Federal agencies prioritize endangered species listings.

When species such as the grizzly bear, the gray wolf, or the dune sagebrush lizard are deemed healthy enough to be removed from the ESA list, States face more lawsuits from agenda-driven groups, blocking or delaying efforts that balance species conservation efforts with other important economic and recreational priorities. While the Interior Department's announced proposal a few months ago to de-list the gray wolf is encouraging, I have a healthy skep-

ticism about when they will follow through on this long overdue decision and allow States to finally manage their wolves.

I am also very troubled that, despite clear legal authority to the contrary, last week this administration finalized an Executive order that will effectively shut out Congress, shut out the States and the American public from knowing the true costs of ESA listings and critical habitat designations that was intended by the law. Already, hundreds of thousands of acres of private property have been included in habitat designations that will dramatically impact the future value and multiple uses of those lands.

For example, the Canadian lynx habitat designation includes more than 16 million acres, including 8.5 million acres of private property. The Fish and Wildlife Service itself acknowledges that this could result in a loss of more than \$2.3 billion in development revenues.

Serious questions remain about the lack of data and science supporting the measures the BLM, the Bureau of Land Management, and the Fish and Wildlife Service claim are needed for the greater sage grouse in 11 Western States. Even though significant State and local resources are being devoted for the sage grouse, in Wyoming alone, the BLM has altered, delayed or denied literally hundreds of oil and gas leases, mining and grazing permits, water pipelines and power transmission lines, and weed control projects—I get exhausted just talking about that—due to the sweeping sage grouse plans.

Rather than force a massive land grab to meet arbitrarily set court deadlines, successful State, local and private species conservation efforts need to be encouraged and given a chance to succeed. Allowing the fate of species to be increasingly decided by Federal bureaucrats, lawyers or Federal judges is not working and undercuts the intent or the purpose of ESA.

So I look forward to hearing from our witnesses today and having a robust discussion on ways that this 40-year-old law can be improved for species and people. In addition to the testimony from our witnesses, we also want to hear from everybody else who may be impacted by the ESA. So I encourage anybody that is sitting here and obviously not testifying to go online and visit our ESA Working Group at [esaworkinggroup.hastings.house.gov](http://esaworkinggroup.hastings.house.gov) and submit whatever comments to the Working Group.

Now I would like to allow my colleagues to make brief opening statements. Everything we do in Congress is done by seniority, and Mr. Lamborn is next senior on the committee, so we will hear from him next.

**STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. Thank you, Mr. Chairman, and I appreciate your efforts putting together the hearings we are going to have today and being a leader in this area of endangered species and the other important issues that the Natural Resources Committee works on.

I want to thank Cynthia Lummis also. She is a leader in the field of resources and energy in our committees in Congress, especially here on the Natural Resources Committee, and she has taken leadership in this area of the Endangered Species Act, and I appreciate

that. It is an act that was well intended and has many good purposes and intentions, but I think it has been prone to some abuse on the part of those who want to shut down development, shut down the access of energy in the name of preserving species.

We all want to make sure that our heritage of species are all protected and even restored, but we have a balance to reach, and I think we can reach that balance. The example of the Preble's Meadow jumping mouse comes to mind. That is a little critter that is found in Colorado and Wyoming and other places, but it has a unique status of when you go north of the State line, into Wyoming, it is not a threat or endangered, but if you go south it is. Animals don't recognize State lines. So, to me, that was an arbitrary distinction on the part of the—I believe it was the Fish and Wildlife Service. And yet it has had a very expensive impact in Colorado.

Developments up and down the front range in Colorado are much more expensive if there is evidence that the Preble's Meadow jumping mouse has a home there. And yet there is science that says it is a sub-species. It belongs to the Bear Lodge jumping mouse family and is not a separate species in and of itself. The science is kind of mixed, and you can find contrary studies. And yet we have tried and tried and tried to get the ear of the Federal agency, and they really don't want to listen to us.

So I am looking forward to the people who are going to be testifying today. I am going to yield back because I want to make sure our schedule keeps moving, but I do look forward to the give-and-take we are going to have and learning more about this critical issue.

Mr. Chairman, I yield back.

The CHAIRMAN. Thank you, Mr. Lamborn.

Mrs. Lummis is next.

**STATEMENT OF THE HON. CYNTHIA M. LUMMIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING**

Mrs. LUMMIS. Well, again, I want to thank the Chairman and all of you for attending this hearing today.

The ESA is a subject that needs attention, having its authorization lapse more than 25 years ago. This hearing is appropriately timely and centered in a part of the country that has been ground zero, the West, for development of the ESA's policies.

During the first half of the 20th century, this Nation had bountiful and almost unlimited natural resources that were in some ways exploited in a manner that caused great concern for the American people, such that during the second half of the 20th century the command and control, big government and litigious policy by courtroom rather than policy by Congress seemed to dominate the manner in which natural resource policy was implemented.

I am an advocate for 21st century conservation, a very new and different conservation ethic that recognizes sound science, recognizes our ability to have finite resources but utilize them in a smart, scientifically based way using private sector principles and voluntary efforts that actually create a better environment for species, for clean air, clean water, for business, for jobs, and for the

American experience of recreationists, sportsmen, and people who use natural resources as their source of a livelihood.

I think this morning we are going to hear examples of how that could be the case. We have people on the ground here in Wyoming who are implementing the 21st century conservation ethic and plowing new ground, creating new policies without the government's heavy hand dictating it. In fact, it is going to percolate up from a local level to the policymaking level.

So I am very excited about the prospects of Wyoming being, as it frequently is, a leader in natural resource policy in a way that sets an example for the rest of the Nation and, indeed, the rest of the world. I am looking forward to our panelists discussing some of those very innovative, cutting-edge new ideas for implementing the 21st century conservation ethic, including the Endangered Species Act and how it can move forward and advance a better environment for species and mankind, and I deeply appreciate your testimony here today.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank you very much for your statement.

And last but certainly not least, I recognize our colleague, new colleague from Montana, Mr. Daines.

**STATEMENT OF THE HON. STEVE DAINES, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MONTANA**

Mr. DAINES. Thank you, Mr. Chairman. It is good to be here with our southern neighbor, Wyoming. Welcome.

I am grateful to be here because the Endangered Species Act poses a challenge for my home State of Montana, as well as my colleagues here who represent Western States.

I am a fifth-generation Montanan. I am an avid and passionate outdoorsman and sportsman, like most Montanans are, but I also recognize the need to keep that balance with jobs. I don't think they are mutually exclusive. I think we can have both. In fact, we like to say in Montana, we like to work well so I can play, with the quality of life that we have.

But I believe the ESA should not be focused primarily on listing the species. It should be focused on recovering the species. We have that example certainly with the gray wolf that Idaho, Montana and Wyoming, other States have encountered. We were happy in Montana seeing the gray wolf finally de-listed in 2011. In fact, I got a wolf tag in my pocket. We know how to manage predators in Montana. And I know that Wyoming's de-listing of the wolf is important, as well.

Our communities are safer now. Our ag and properties can be better protected from the gray wolf.

Chairman Hastings, Representative Lummis and the other members of the committee are hoping that the FWS will finalize its decision to de-list the wolf in the lower 48 States.

But besides the gray wolf, the grizzly bear poses a risk to resource development safety in our communities in Montana.

And finally, I continue to keep a close eye on the Federal Government as the BLM moves forward with their safety routes conservation planning. Unfortunately, without reforming the ESA, again getting back to what it was designed to do is to recover the species,

it has turned into a dream for litigants. I think the trial lawyers probably win more than anybody else in this process. In fact, Deputy Interior Secretary David Hayes, out-going Deputy Secretary, recently declared that critical habitat designations related to the ESA have been “fish in the barrel litigation for folks.”

The proposed plan by BLM has the potential to significantly impact our ag, our oil and gas, our timber, fishing, hunting, and multiple use industries. We will be hearing about these challenges in my home State this afternoon. We will have this same hearing up in Billings.

But thanks again for having me. I look forward to hearing the testimony. I yield back my time.

The CHAIRMAN. I want to thank my colleagues for their opening statements. Now we will turn to our panel of five.

You were asked by the committee to submit written statements, and your entire statement will appear in the record. What I would like you to do is to try to hold your oral comments to 5 minutes. In front of you we have a little machine there that is our timing lights. The green, yellow and red, they are kind of self-explanatory.

The way it works, when the green light comes on, it means your time has started and you are doing very, very well. When you get to the yellow, that means you have used 4 minutes of your 5. And then when it gets to red, that means your 5 minutes are up. Obviously, we want you to complete your thoughts, but keep your oral comments within that time period and allow us to have more interaction at the end of the period.

So with that, our first witness is Mr. Robert Hendry, Vice Chair of the Natrona County Board of Commissioners from Lysite.

Mr. Hendry, you are now recognized for 5 minutes.

**STATEMENT OF ROBERT L. HENDRY, VICE CHAIR, NATRONA COUNTY BOARD OF COMMISSIONERS, LYSITE, WYOMING**

Mr. HENDRY. Thank you, Mr. Chairman, Representative Lummis, and members of the committee. My name is Rob Hendry, and thank you for the opportunity to testify on the crucial issue of Endangered Species Act reform. I am a County Commissioner right here in Natrona County, so welcome to Casper.

Together with my wife and two sons, we own and manage Clear Creek Cattle Company, a fourth-generation family ranch. I am past-president of the Wyoming Stock Growers Association, a livestock industry association that is represented in Wyoming since 1872, and I currently serve on the Agriculture, State and Public Lands and Water Resources Committee of the Wyoming County Commissioners Association. While the Wyoming Stock Growers and the Wyoming Commissioners Association concur with these remarks, they are my own.

I want to share with the committee some financial impacts on the State of Wyoming that ESA has had. These include grizzly bears and wolves. In 2012, we had approximately 1,000 head of cattle killed. We had the value of \$742,000; 1,500 head of sheep killed, at a value of \$273,000. These are dollars that can't roll over in our community.

If the little impacts of the Preble's Meadow jumping mouse in southeastern Wyoming and northern Colorado, this questionable



sub-species which has been de-listed in Wyoming and then re-listed as a result of litigation is one of them. For example, when an aquatic species is listed, the laws and restrictions put upon water rights can have a major impact on both agricultural enterprises and land value.

Further, the listing of plant species often leads to private land value loss or private land value loss or reduction in public land grazing.

The ESA is 40 years old. It can be characterized like an over-aged truck. It serves a very useful purpose, but it is in bad need of repair. I would like to offer a few thoughts on how we can fix ESA in a meaningful manner.

The first objective of the ESA should be to foster species management to avoid listing, to have the acknowledgement that this cannot be accomplished solely through Federal regulations. You have to work with land owners, industry, State and local governments to enhance species and habitat, and I can think of no better way than Wyoming's sage grouse core area strategy.

It is often said that the cost of filing a petition is no more than a 48-cent stamp. We believe that listing a petition should be required to include a reasonable amount of peer-reviewed science significant to support the claim and available scientific data on its historic range within North America.

In reviewing and issuing the finding of a properly filed petition, the Service should be required by law to consult with State wildlife agencies operating within current and historic range.

And when the Service determines that a listing of threatened or endangered is warranted, the delineation and designation of crucial habitat should be clearly in the recovery criteria and should accompany the listing.

The designation of crucial habitat should always have an analysis on the impact of other wildlife and plant species that it may affect.

It should have a clear, distinct population segment established in the legislation so that it is not subject to re-definition and not subject to political science but subject to sound science.

The role of the 4(d) rule should be expanded to ensure that it will always have a reasonable take of a species in the course of normal human activity.

And when a species is listed with the establishment of a clear recovery criteria, citizens have certain knowledge of knowing that when the criteria have been met, then de-listing will automatically occur.

Finally, the opportunity of litigation that comes to the Service's limited human and financial resources, while imposing huge, often immeasurable costs on the private sector and the revenues of the State of Wyoming.

In closing, let me emphasize the real and measurable social and economic impacts of the ESA on ranchers and local governments. The energy, tourism, agricultural industry is the three-legged stool that provides a robust, healthy economy. It provides good-paying jobs in Wyoming, and it helps us pay our bills and put money away for a rainy day. Thank you.

[The prepared statement of Mr. Hendry follows:]

PREPARED STATEMENT OF ROBERT L. HENDRY, VICE CHAIR, NATRONA COUNTY  
BOARD OF COMMISSIONERS, LYSITE, WYOMING

Mr. Chairman, Representative Lummis and members of the committee, I am Rob Hendry from Lysite, Wyoming. Thank you for the opportunity to present testimony on the critical issue of Endangered Species Act (ESA) reform. I am a Natrona County Commissioner. Together with my wife and two sons, we own and manage Clear Creek Cattle Company, our fourth-generation family ranch. I am the past President of the Wyoming Stock Growers Association and I currently serve on the Agriculture, State and Public Lands and Water Resources Committee of the Wyoming County Commissioners Association. WCCA represents the elected commissioners of Wyoming's 23 counties. WSGA has represented Wyoming's livestock industry since 1872. While the WCCA and the WSGA concur with these remarks, they are my own.

I wish to offer insight on two points: First, that the current implementation regime for the ESA creates too much uncertainty by way of its varied application, which creates headaches for the landowner while providing no sure foundation for the successful conservation of our Nation's most vulnerable species; and second, while the ESA has been interpreted to ensure the preservation of species "whatever the costs," it does not necessarily mean that solutions cannot be obtained via a working collaboration between industry, environmental non-profit organizations, private landowners, the individual States, and the Fish and Wildlife Service (Service) to minimize those costs.

The State of Wyoming has over 50 percent of Federal public land commingled with private lands. There are currently 17 listed and candidate plant and animal species in Wyoming. As demonstrated by the attached maps (See Exhibit 1) for these species indicating the areas for which section 7 consultation is required under the ESA, virtually every acre of our State is directly impacted by the ESA. These impacts include the economic impacts on Wyoming's key industries of energy, tourism, and agriculture; loss of revenues to State and local governments; and changes to the customs and culture of our citizens.

Although the ESA as adopted by Congress in 1973 explicitly precluded the consideration of economic criteria in species listing, Congress soon recognized the potentially devastating economic impacts and responded in 1978 with the provision under section 4 that allows the Secretary to "take into consideration the economic impact, . . . and any other relevant impact, of specifying any particular area as critical habitat." While this was an important step, several challenges remain.

First, because the designation of critical habitat often occurs much later than the listing, significant economic impacts often occur prior to or absent the designation of critical habitat. Second, there is no well-developed nor widely accepted toll for measuring the economic impacts to the private sector and to local governments. While the Federal Government's forthcoming rule regarding the simultaneous disposition of its economic analysis upon the designation of critical habitat is welcome, the absence of factors in the proposed incremental analysis creates ambiguity where there is little room for it. Moreover, the absence of factors gives significant deference to the Secretary, which raises concerns that any economic analysis undertaken will be prejudiced by flavor of the day political machinations and not the kind of long-term strategic analysis required. Distinguished University of Wyoming Professor Jason Shogren noted this in a paper that he published on "Economics and the Endangered Species Act."

"The best measure of economic loss is opportunity cost—the foregone opportunities due to restrictions on the use of property due to listings, designation of critical habitat, and recovery plans. Opportunity costs include the reduced economic profit from restricted or altered development projects including agriculture production, timber harvesting, minerals extraction, and recreation activities; wages lost by displaced workers who remain unemployed or who are re-employed at lower pay; lower consumer surplus due to higher process; and lower county property and severance tax revenue."

Professor Shogren focused on the lack of national data to measure the impact of the ESA on economic growth, as well as to measure direct private expenditures driven by the ESA.

I want to share with the committee some of the financial impacts of the ESA on Wyoming agriculture. Too often an uninformed public assumes the economic impacts are limited to the costs of predation by large carnivore species including the grizzly bear and the currently delisted gray wolf. Reported losses of livestock in Wyoming to these two species in 2012 included approximately 1,000 head of cattle with a value of \$742,000 and 1,500 head of sheep with a value of \$273,000. While these numbers may seem relatively insignificant in relation to a \$1 billion industry, it is

important to recognize that these losses fall disproportionately on producers in those areas inhabited by these protected species. The impact of these species is even greater in other areas for which economic data is lacking. These include:

1. Direct impacts of grizzly bear and gray wolf activity on livestock weight gains;
2. Additional labor and equipment costs associated with livestock protection and predation deterrence;
3. Reductions and/or restrictions placed on public land grazing due to the presence of grizzly bears or gray wolves;
4. Compliance with food storage, carcass disposal and other regulatory burdens;
5. Difficulty of finding employees who are willing to tend livestock in grizzly bear occupied areas; and
6. Diminished value of grazing permits and private grazing lands in bear and wolf occupancy areas.

At the other end of the spectrum from the grizzly bear is the tiny but impactful Preble's Meadow Jumping Mouse found only in southeastern Wyoming and northern Colorado. This questionable subspecies, which has been delisted in Wyoming then relisted as a result of litigation, has burdened agriculture with:

1. Restricted ability to clean irrigation ditches;
2. Restrictions on changes in agricultural practices under the 4(d) rule;
3. Real time costs of continued participation in numerous public and industry meetings held to address mouse issues due to the fact that many of our agricultural producers do not have hired labor, and therefore time away from the farm/ranch directly impacts ranch work and profitability; and
4. Direct cost of ranchers who have employed biologists or environmental consultants to conduct studies to counter the evidence on habitat and mouse classification presented by the USFWS.

I merely offer the grizzly bear, gray wolf, and preble's jumping mouse as specific examples. Comparable costs to agricultural producers can be traced to many of the other listed animal species. For example, when aquatic species are listed, loss of, or restrictions upon, water rights can have a major impact on both the agricultural enterprise and on land values. Further, the listing of plant species often leads to reduced private land values and loss or reduction in public land grazing permits.

The response of Federal land management agencies to the presence of listed or candidate species often goes far beyond the specific requirements of the ESA. Allow me to provide a very recent example. In 2012, the U.S. Forest Service initiated a section 7 consultation with the Fish and Wildlife Service (Service) on livestock grazing on a complex of nine allotments on the Bridger-Teton National Forest. The outcome was a biological opinion that authorized the lethal removal of no more than three female grizzly bears over the next three grazing seasons. This summer the Wyoming Game and Fish, in consultation with the Service, removed two female bears that were habitual killers of cattle. Following removal of the second bear, the U.S. Forest Service advised the permittees that, if a third female grizzly was lethally removed, they would require that all livestock be removed from these allotments. While this threat has been withdrawn at this time, it is indicative of the pressure faced by Wyoming ranchers.

Let me now turn to one of the most challenging and costly impacts of the ESA to the ranching industry—inconstant litigation. When I became President of the Wyoming Stock Growers Association in 1999, for example, one of my first actions was to establish a Litigation Fund. At that time, WSGA had served our industry for over 125 years without having to engage in litigation to protect our members' interests. Since 1999, however, WSGA has expended several hundred thousands of dollars in defending its members' private property rights and Federal grazing permits from challenges by groups that believe environmentalism takes place in the courts, such as Centers for Biological Diversity and Western Watersheds Project, as opposed to groups who are interested in making meaningful impacts on the ground. Furthermore, these challenges are typically premised, in whole or in part, on purported threats to listed species.

The costs associated with litigation are not limited to the State and the associations I represent today alone. According to the Department of Justice, it spent more than \$15 million on attorney fees for alleged violations of the ESA in just the past 4 years. Even more shocking is the following: In fiscal year 2011, the Service, spent over 75 percent of its \$20.9 million listing and critical habitat budget responding to litigation alone. That leads me to question the underlying efficacy of the ESA in its current form. These precious resources should not be spent in the courts. This is money that could be spent on enhancing our land and wildlife habitat, instead of paying lawyers and clogging the court system.

Compounding the litigation issue is that the ESA lacks any certainty in its status review and the delisting processes. The result of these ambiguities is, again, litigation. The grizzly bear has been delisted and relisted due to litigation. The gray wolf was delisted, relisted, and is now threatened by litigation to relist again in Wyoming. The preble's jumping mouse was delisted, then relisted by way of litigation. The bottom line is that when the listing of an iconic species such as the Greater Sage Grouse is determined by the Service as not warranted, these groups just come back again through litigation until finally reaching their objective of securing a listing. A listing of the Greater Sage Grouse will cripple our State and local economies.

In the end, all of these potential economic pitfalls and encumbrances, in their aggregate, have a negative economic and cultural impact on Wyoming's counties. I can speak on behalf of all County Commissioners in Wyoming that no elected official wants to see the destruction of a species, especially when practicable, workable alternatives are obtainable. Too often conservation and economic development are held to be mutually incompatible. Perhaps that is the flavor of the day in Washington, but in Wyoming we have proven time and again the effectiveness of collaboration to obtain real, workable solutions to the issue at hand. Whether it is Hydraulic Fracturing, Sage Grouse Core Area Development or Carbon Sequestration, Wyoming has continually demonstrated its willingness to take the lead and to work with myriad Federal and State agencies, local government, as well as private parties to develop solutions that not only minimize detrimental impacts to our most vulnerable flora and fauna, but also encourage sustainable economic growth in Wyoming.

Essentially, the ESA can be compared to the ranch pickup that is 40 years old. It still serves a very useful purpose, but badly needs a tune-up. I would like to offer a few thoughts as to where one might begin to reform the ESA in a meaningful manner:

1. The first objective of the ESA should be to foster species management that avoids listing. There needs to be acknowledgment that this cannot be accomplished solely through Federal regulation. It is best accomplished when landowners, industry, and State and local governments are motivated to proactively act to enhance a species and its habitat. I have found no better example of this than the leadership that Wyoming has exhibited in protecting and enhancing the sage grouse through its Core Area Development program;
2. It is often said that "The cost of filing a listing petition is no more than a 48 cent stamp." We believe that a listing petition should be required to include a reasonable amount of peer-reviewed science sufficient to support a claim that the subject of the petition is a distinct species or subspecies and a description of available scientific data on its current and historic range within North America. A listing petition should only be valid for a single species or subspecies and, in turn, a legal challenge to a 90-day or 12-month finding should be limited to that specific species or subspecies;
3. In reviewing and issuing a finding on a properly filed petition, the Service should be required by law to consult with State wildlife agencies operating within the current and historic range;
4. When the Service determines that a listing as threatened or endangered is warranted, the designation of critical habitat and the delineation of clear recovery criteria should be required to accompany the listing. The designation of critical habitat should include an analysis of the impact on other wildlife or plant species that may be affected;
5. A clear definition of "distinct population segment" should be established in legislation so that it is not subject to "redefinition" by subsequent solicitors as it has been in the past;
6. The role of the 4(d) rule should be expanded to assure that it will support reasonable "take" of species in the course of normal human economic activity;
7. When a species is listed with the establishment of clear recovery criteria, citizens should have the certainty of knowing that, when those criteria have been met, delisting will automatically occur; and
8. Finally, the opportunity for litigation that consumes limited the Service's human and financial resources while imposing huge, often immeasurable, costs on the private sector and the revenues of State and local governments must be stemmed.

In closing, let me again emphasize the real, often immeasurable social and economic impacts of the ESA on ranchers and local governments in a State such as Wyoming that is natural resource dependent for its economy and its culture. The energy industry, tourism industry and agricultural industry is the three legged stool that provides a robust and healthy economy. These industries provide good paying jobs for Wyoming citizens. They also help us pay our bills and put money in the

bank for a “rainy day”. As it is currently implemented, the ESA is too far reaching in its impacts on both the species it seeks to protect and the lives that it impacts to allow so many of these impacts to be left to the regulatory and judicial processes. After 40 years, the need for greater Congressional direction is abundantly clear and that should be that the conservation of species is necessarily best accomplished by those closest to the resource.

Thank you for the opportunity to appear before you today. I look forward to answering questions.

#### JOINT WCCA/WSGA EXHIBIT I

##### FWS FEDERALLY LISTED, PROPOSED AND CANDIDATE SPECIES IN WYOMING AREAS SUBJECT TO SECTION 7 CONSULTATION

#### Contents

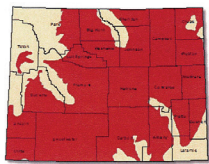
#### Wildlife





- *Greater Sage-grouse* (Candidate)
- *Yellow-billed Cuckoo* (Candidate)
- *Colorado River Fish* (Endangered)
  - (Bonytail, Colorado Pikeminnow, Humpback Chub, Razorback Sucker)
- *Kendall Warm Springs Dace* (Endangered)
- *Platte River Species* (Endangered)
  - (Interior Least Tern, Pallid Sturgeon, Piping Plover, Western Prairie Fringed Orchid, Whooping Crane)
- *Wyoming Toad* (Endangered)
- *Black-footed Ferret* (Endangered, Experimental)
- *North American Wolverine* (Proposed)
- *Canada Lynx* (Threatened)
- *Grizzly Bear* (Threatened)
- *Preble's Meadow Jumping Mouse* (Threatened)



#### Plants


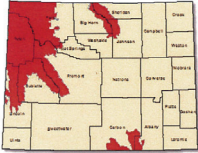

- *Fremont County Rockcress* (Candidate)
- *Whitebark Pine* (Candidate)
- *Blowout Penstemon* (Endangered)
- *Colorado Butterfly Plant* (Threatened)
- *Desert Yellowhead* (Threatened)
- *Ute Ladies'-tresses* (Threatened)

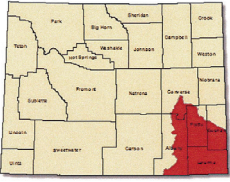
Please Note, All Information Can Be Found At: [http://www.fws.gov/wyominges/Pages/Species/Species\\_Endangered.html](http://www.fws.gov/wyominges/Pages/Species/Species_Endangered.html).




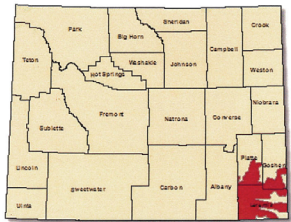
SPECIES	STATUS	MAP
Greater Sage-grouse ( <i>Centrocercus urophasianus</i> )	Candidate	<p><u>Potential Distribution in Wyoming by County</u></p> <p>Counties where Greater Sage-Grouse is known or believed to occur.</p> <p>Albany County   Big Horn County   Campbell County   Carbon County   Converse County   Crook County   Fremont County   Goshute County   Hot Springs County   Johnson County   Laramie County   Lincoln County   Natrona County   Niobrara County   Park County   Platte County   Sheridan County   Sublette County   Sweetwater County   Teton County   Uinta County   Washakie County   Weston County</p>  <p>■ Wyoming Section 7 Range Greater Sage-grouse</p>

Yellow-billed Cuckoo ( <i>Coccyzus americanus</i> )	Candidate	<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where Yellow-billed Cuckoo is known or believed to occur.</p>  <p>Carbon County   Fremont County   Lincoln County   Sublette County   Sweetwater County   Teton County   Uinta County</p> <p>■ Wyoming Section 7 Range Yellow-billed Cuckoo</p>
Colorado River Fish ▽		<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where effects to Colorado River Fish should be considered.</p>  <p>Carbon County   Fremont County   Lincoln County   Sublette County   Sweetwater County   Uinta County</p> <p>■ Wyoming Section 7 Range Colorado River Fish</p>
▽ Bonytail ( <i>Gila elegans</i> )	Endangered	(See Information Above Under Colorado River Fish)
▽ Colorado Pikeminnow ( <i>Ptychocheilus lucius</i> )	Endangered	(See Information Above Under Colorado River Fish)
▽ Humpback Chub ( <i>Gila cypha</i> )	Endangered	(See Information Above Under Colorado River Fish)
▽ Razorback Sucker ( <i>Xyrauchen texanus</i> )	Endangered	(See Information Above Under Colorado River Fish)
Kendall Warm Springs Dace ( <i>Rhinichthys osculus thermalis</i> )	Endangered	<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where Kendall Warm Springs Dace is known or believed to occur.</p>  <p>Sublette County   Teton County</p> <p>■ Wyoming Section 7 Range Kendall Warm Springs Dace</p>
Platte River Species □		<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where effects to Platte River Species should be considered.</p> <p>Albany County   Carbon County   Converse County   Fremont County   Goshen County   Laramie County   Natrona County   Niobrara County   Platte County   Sublette County</p>  <p>■ Wyoming Section 7 Range Platte River Species</p>
□ Least Tern ( <i>Sterna antillarum</i> )	Endangered	(See Information Above Under Platte River Species)
□ Pallid Sturgeon ( <i>Scaphirhynchus albus</i> )	Endangered	(See Information Above Under Platte River Species)
□ Piping Plover	Endangered	(See Information Above Under Platte River Species)

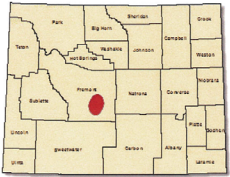
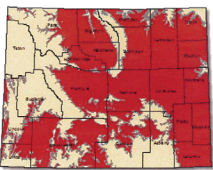
<i>(Charadrius melodus)</i> Whooping Crane <i>(Grus Americana)</i>	Endangered	(See Information Above Under Platte River Species)
Wyoming Toad <i>(Bufo baxteri)</i>	Endangered	<p><b>Potential Distribution in Wyoming by County</b></p>  <p>Counties where Wyoming Toad is known or believed to occur.</p> <p>Albany County</p> <p>■ Wyoming Section 7 Range Wyoming Toad</p>
Black-footed Ferret <i>(Mustela Nigripes)</i>	Endangered, Experimental	<p><b>Counties of the Black-footed Ferret Experimental Population.</b></p> <p>Albany County   Carbon County   Natrona County</p> 

North American Wolverine <i>(Gulo gulo luscus)</i>	Proposed	<p><b>Potential Distribution in Wyoming</b></p>  <p>Counties where North American Wolverine is known or believed to occur.</p> <p>Fremont County   Hot Springs County   Lincoln County   Park County   Sublette County   Teton County</p> <p>■ Wyoming Section 7 Range North American Wolverine</p>
Canada Lynx <i>(Lynx canadensis)</i>	Threatened	<p><b>Potential Distribution in Wyoming by County</b></p>  <p>Counties where Canada Lynx is known or believed to occur.</p> <p>Albany County   Big Horn County   Carbon County   Fremont County   Hot Springs County   Johnson County   Lincoln County   Park County   Sheridan County   Sublette County   Teton County   Washakie County</p> <p>■ Wyoming Section 7 Range Canada Lynx</p>
Grizzly Bear <i>(Ursus arctos horribilis)</i>	Threatened	<p><b>Potential Distribution in Wyoming by County</b></p>  <p>Counties where Grizzly Bear is known or believed to occur.</p> <p>Fremont County   Hot Springs County   Lincoln County   Park County   Sublette County   Teton County</p> <p>■ Wyoming Section 7 Range</p>

Grizzly Bear		
Western Prairie Fringed Orchid <i>(Platanthera praeclara)</i>	Threatened	(See Information Above Under Platte River Species)
Preble's Meadow Jumping Mouse <i>(Zapus hudsonius preblei)</i>	Threatened	<p><b>Potential Distribution in Wyoming</b></p>  <p>Counties where Preble's Meadow Jumping Mouse is known or believed to occur.</p> <p>Albany County   Converse County   Goshen County   Laramie County   Platte County</p> <p>■ Wyoming Section 7 Range Preble's Meadow Jumping Mouse</p>

Fremont County Rockcress ( <i>Boechera pusilla</i> )	Candidate	<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where Fremont County Rockcress is known or believed to occur.</p> <p>Fremont County</p> <p>■ Wyoming Section 7 Range Fremont County Rockcress</p> 
Whitebark Pine ( <i>Pinus albicaulis</i> )	Candidate	<p><b>Potential Distribution in Wyoming</b></p> <p>Counties where Whitebark Pine is known or believed to occur.</p> <p>Fremont County   Hot Springs County   Lincoln County   Park County   Sublette County   Teton County</p> <p>■ Wyoming Section 7 Range Whitebark Pine</p> 
Blowout Penstemon ( <i>Penstemon haydenii</i> )	Endangered	<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where Blowout Penstemon is known or believed to occur.</p> <p>Carbon County   Goshen County</p> <p>■ Wyoming Section 7 Range Blowout Penstemon</p> 
Colorado Butterfly Plant ( <i>Gaura neomexicana coloradensis</i> )	Threatened	<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where Colorado Butterfly Plant is known or believed to occur.</p> <p>Goshen County   Laramie County   Platte County</p> <p>■ Wyoming Section 7 Range Colorado Butterfly Plant</p> 



Desert Yellowhead ( <i>Yermo xanthocephalus</i> )	Threatened	<p><b>Potential Distribution in Wyoming by County</b></p> <p>Counties where Desert Yellowhead is known or believed to occur.</p>  <p>Fremont County</p> <p>■ Wyoming Section 7 Range Desert Yellowhead</p>
Ute Ladies'-tresses ( <i>Spiranthes diluvialis</i> )	Threatened	<p><b>Potential Distribution in Wyoming</b></p> <p>Counties where Ute Ladies'-tresses is known or believed to occur.</p>  <p>Albany County   Big Horn County   Campbell County   Carbon County   Converse County   Crook County   Fremont County   Goshen County   Hot Springs County   Johnson County   Laramie County   Lincoln County   Natrona County   Niobrara County   Park County   Platte County   Sheridan County   Sublette County   Sweetwater County   Uinta County   Washakie County   Weston County</p> <p>■ Wyoming Section 7 Range Ute Ladies'-tresses</p>

The CHAIRMAN. Thank you very much, Mr. Hendry.

I will recognize now Mr. Robert Wharff, Executive Director of the Wyoming Sportsmen for Fish and Wildlife, from Evanston, Wyoming.

Mr. Wharff, you are recognized for 5 minutes.

**STATEMENT OF ROBERT A. WHARFF, EXECUTIVE DIRECTOR, WYOMING SPORTSMEN FOR FISH AND WILDLIFE, EVANSTON, WYOMING**

Mr. WHARFF. Thank you, Honorable Chairman Hastings, Representative Lummis, and members of the Natural Resources Committee. I go by Bob Wharff, unless my mom is yelling at me. I do appreciate the opportunity to appear before the Natural Resources Committee today and testify about sportsmen concerning the State and local efforts to protect species, jobs, property, and multiple use amidst a new war on the West. I have some materials that are in a packet, Mr. Chairman, and with your permission, I would request that those materials are entered into the record.

The CHAIRMAN. Without objection, they will be part of the record.

Mr. WHARFF. Thank you, Mr. Chair.

My testimony will focus mainly on two species which are most likely to impact Wyoming sportsmen and hunters which come here seeking the adventure of a lifetime. In Wyoming, we have seen both the grizzly bear and the gray wolf meet and maintain recovery objectives. Both of these species have been removed from Federal protections, and both have been re-listed as a result of the courts being used by litigants to maintain protections when these species have met and continue to exceed recovery goals.

While both of these species have followed similar paths, they both have taken different paths to get where we are today.

In the packet that I handed out, Mr. Chairman, there is a map, and just for brevity because I don't feel like doing this for 5 minutes, you will see a map that I was able to take from the Game and Fish Department. It shows Yellowstone National Park. The red boundary shows the recovery zone. The purple boundary shows what they identified as simple grizzly bear habitat, and the little blue dots are capture locations where the Game and Fish Department capture grizzly bears and either relocate them, or in some instances those animals were euthanized.

I think this does highlight a flaw within the Endangered Species Act, and that is that wildlife management is not an exact science. Multiple fabrics can and do influence responses from our vast wildlife resources. The very nature of the beast, the grizzly bear, so to speak, is its ability to surmount and overcome challenges they face in the untamed Wild West.

I am going to go on and talk about wolves, and I really would ask the committee to read through this on your travels up to Billings, because I am just going to touch it light. There is a lot of material in here. There is an article in here that I really would encourage you to read when you have time. It is one that we published in our quarterly publication.

But for brevity's purpose, I think this speaks volumes. If you look at this map, this map shows the distribution of Rocky Mountain health in the world. This map shows Shiras moose distribution. You guys can probably barely even see that in the green. There is another one that shows that the blue is Big Horn. The red shows distribution of gray wolves.

Now, I am going to depart from my presentation. It speaks volumes. Why are we putting our carriers at risk to protect a species that is anything but threatened? It was brought in as a non-essential experimental population, and it has been treated with kid gloves, and we were promised it would not have local impacts. I can tell you I have a lot of friends in Wyoming that would tell you they are lucky to be here today.

I have included a statement. Unfortunately, he addressed it to the State of Wyoming, Mr. Chair. I hope you guys would still consider that even if we are not all from here. But it is a personal comment from an individual that runs a family business, and he talks directly about the impacts, his experience due to the impacts of wolves and grizzly bears on his personal business.

I think that the wolf also highlights another problem caused by the ESA and the manner in which it is implemented. Ultimately, it is Wyoming and the citizens of this State that will be tasked and burdened with the cost of maintaining and sustaining this recovery of non-essential experimental population of gray wolves found within its borders. Yet, a court far removed from the area may, in fact, decide how Wyoming and its citizens will live with a species that we have recovered.

And just, Mr. Chairman, I have a point in my comments. I know that the Working Group had asked a series of questions. I did answer those for the committee. I am not going to bother since it is recorded here.

I did also capture some possible solutions. Just for brevity, I do think one of the things that I see lacking is I believe that the

States are better suited to manage wildlife. That is what they do, and I think they do it well. I think we probably shouldn't look away so we can make them more of an even partner with the U.S. Fish and Wildlife Service under the Endangered Species Act.

One of the other points is single species management. This simply doesn't work. Mr. Chairman, we have not seen it yet, but at some point in time we are going to see species advocates given protections either from the Migratory Bird Treaty, and an example of that is the raven. I think we are starting to see that ravens are having a far greater impact on our sage grouse populations than anybody had foreseen, and I do think those are critical factors that we have to address in how do we resolve these conflicts.

Unfunded Federal mandates, I know we have gone over that a little bit. Fiscal Year 2012, Mr. Chairman, Wyoming contributed \$1.7 million just to grizzly bear management. Of that, the Federal portion was \$126,000. I don't feel that is a very fair or admirable sharing of the responsibilities. Government accountability and human health and safety, those are all factors, Mr. Chairman.

And since I am out of time, I will stop there. Thank you for this opportunity.

[The prepared statement of Mr. Wharff follows:]

PREPARED STATEMENT OF ROBERT A. WHARFF, EXECUTIVE DIRECTOR, WYOMING  
SPORTSMEN FOR FISH AND WILDLIFE, EVANSTON, WYOMING

Honorable Chairman Hastings, Representative Lummis and members of the Natural Resources Committee,

I appreciate the opportunity to appear before the Natural Resources Committee and testify in behalf of sportsmen, concerning "*State and Local Efforts to Protect Species, Jobs, Property and Multiple Use Amidst a New War on the West*".

I have some materials that I will give to the committee which I have obtained from individuals which wanted their story to be told but due to time constraints, I will not be able to cover all of them. With your permission I would request these materials be added to the record.

My testimony will focus on the two species which are most likely to impact Wyoming's Sportsmen and our non-resident hunters which come here seeking the adventure of a lifetime!

We have seen both the grizzly bear and the gray wolf meet and maintain recovery objectives. Both of these species have been removed from Federal protections and both have been relisted as a result of the courts being used by litigants to maintain protections when these species have met and continue to exceed recovery goals.

While both of these species have followed similar paths, they both have taken different paths to get us where we are today.

#### GRIZZLY BEARS

Grizzly bears remain an icon of the Untamed Wild West. In 1975, grizzly bears were given Federal protections to allow their numbers to increase and to ensure that they had room to roam. Throughout this entire process, wildlife biologists were continually developing and modifying techniques designed to afford some level of comfort in stating the obvious; grizzly bear numbers were increasing. As those numbers continue to increase, it is only natural to expect that you will see greater conflicts between this magnificent animal and the humans which reside in proximity to their recovery areas.

I have provided you with a map as I believe the visual speaks volumes as to the successfulness of efforts to protect and restore grizzly bears to a sustainable population. You can see the recovery area outlined in red, the identified and accepted suitable habitat outlined in purple. The blue dots identify 2012 Capture Location Sites. The continued expansion of grizzly bears is a good sign that we have healthy and robust populations of bears; however, it also demonstrates the fact that we will most assuredly continue to see an increase in human/bear conflicts. We have recently seen about 4-5 incidents this year and hunters have yet to enter the remote areas in pursuit of their quarry. Just 2 years ago, we saw two people in Wyoming

that lost their lives to grizzly bear encounters and a few more that were injured but survived the ordeal. Most of these incidents resulted in the grizzly bears (if they could be found and confirmed the perpetrator) ultimately forfeiting their lives as well.

In 2012, within Wyoming but excluding National Parks, there were 28 known or probable human-caused mortalities of grizzly bears. A known mortality occurs when the carcass of the bear is found and a probable mortality denotes that no carcass was found but the bear is believed to have sustained an injury that would result in the death of the animal. Cubs-of-the-year whose mother is a known mortality is considered probable mortalities. In 2012, 4 cubs-of-the-year were counted as probable mortalities but the WY G&F report didn't identify in which category they occurred.

According to the WY G&F report; 3 grizzly bears died from Natural causes, 11 were killed in self-defense, 12 were removed by agency personnel, 1 was killed after being struck on a highway and 1 was mistakenly killed by a black bear hunter.

Of the 12 removed by agency action; 5 were removed due to livestock depredation, 6 were removed due to property damage and human food rewards and 1 individual was removed because it had become extremely habituated to humans.

The report also noted that 5 of the 12 bears removed by agency personnel occurred outside of the Suitable Habitat Boundary. Several of the reported self-defense mortalities and the mistaken identification by a hunter are currently under investigation.

I mention this information for two reasons; first, I believe too many people believe that ESA protections prevent the death of grizzly bears; and second, grizzly bears are a human health and safety issue that often are not given adequate consideration.

Grizzly bears were delisted at the request of the USFWS and this decision was based upon the best available science but the agency tasked with making the decision as to whether or not threats have adequately been addressed and recovery goals obtained and sustained over a considerable period of time. Litigants were able to successfully obtain court orders to trump this decision and grizzly bears have once again been placed under Federal protections.

It appears as though, given the time the USFWS, has been able to collect scientific data that demonstrates the perceived threats were there but that grizzly bears are able to switch to alternative food sources and will continue to maintain and sustain themselves at recovery level objectives.

This does highlight a flaw within the ESA; wildlife management is not an exact science. Multiple factors can and do influence behavior and responses from our vast wildlife resources. The very nature of the beast, so to speak, is of its ability to surmount and overcome challenges they face in our Untamed Wild West.

#### GRAY WOLVES

The gray wolf is an entirely different tale to be told.

Gray wolves were first listed as threatened and endangered in the lower 48 States in 1974. In 1978, saw the reclassification of the Gray Wolf in the United States and Mexico, with the determination of Critical Habitat in Michigan and Minnesota. In 1994, under a specially created and newly established classification; Nonessential Experimental Population of gray wolves were defined and brought into what is now known today as the Northern Rocky Mountain (NRM) Distinct Population Segment (DPS). The DPS designation was adopted in 2003, when wolves in the NRM had obtained and maintained recovery objectives for 3 consecutive years.

The primary three States contained within the NRM DPS are Idaho, Montana and Wyoming. All three States presented the USFWS with their preferred gray wolf management plans. It is not surprising for me to see that when you look at the official USFWS Web site the Nonessential Experimental Population Segment is now only mentioned as an Experimental Population. Words do matter and it is important as you look at the ESA and how it has morphed into something far different than its original intended purpose.

It is important to understand that initially, these three States were collectively tasked with recovering this Nonessential Experimental Population of Gray Wolves within this specific geographical region known as the NRM DPS. Wolf experts were asked to review all three State wolf management plans to determine if collectively, they would allow for gray wolves to be maintained and sustained. Some expressed concerns about Wyoming's plan but ultimately 10 out of the 11 experts stated that gray wolves would be maintained and sustained under all 3 unique State plans. It wasn't long however until Wyoming and its plan was placed under closer scrutiny. Wyoming's plan was and remains a plan that would contain wolves to areas of the

State where they have suitable habitat and are the least likely to get into conflict with current and well established uses that Wyoming citizens desire to maintain. Wyoming was first isolated by the other two States and the USFWS in an attempt to force Wyoming to reconsider the plan adopted by its citizens. In 2005, we saw for the first time, actions that were applied to Idaho and Montana. Both States were awarded greater management flexibility under the newly established 10(j) rules of the ESA.

In 2008, we saw the USFWS remove the NRM DPS from Federal protections and saw the implementation of the 10(j) rules which were afforded only to Idaho and Montana. The importance of this step was that now States and tribes with approved USFWS plans were now able to better address “unacceptable impacts” to wild ungulate populations. Wyoming was excluded from this reprieve for our wild ungulates because the USFWS was unwilling to accept Wyoming’s wolf management plan. Because Wyoming had made changes to our plan during the 2007 legislative session, Wyoming was included in the recommendation to remove Federal protections; however, the 10(j) ruling allowing for greater management flexibility to protect our wild ungulate populations was NOT available or afforded to Wyoming.

In 2009, Wyoming was once again treated differently than the other States within the NRM DPS. The USFWS, who actually helped Wyoming modify its 2007 plan to conform to their requested changes, once again declined in 2009 to defend Wyoming’s plan and claimed it did not contain an adequately regulatory mechanism for the purpose of the ESA.

Wyoming was once again forced to defend the legitimacy of their wolf management plan and wolf management decisions were once again turned over to the courts.

In 2011 we saw the final delisting of the NRM DPS, excluding Wyoming.

In 2012 we finally saw the delisting of gray wolves for Wyoming; however, that action was challenged in two different District courts outside the State of Wyoming. One of those courts has remanded authority back to the Wyoming District court; while the other, located in Washington, DC seeks to determine whether or not Wyoming should have the ability to manage wolves according to their wolf management plan.

This also highlights another problem caused by the ESA and the manner in which it is implemented, for it is ultimately Wyoming and the citizens of this State that will be tasked and burden with the costs of maintaining and sustaining this recovered Nonessential Experimental Population of gray wolves found within its borders; yet, a court far removed from the area impacted may decide how Wyoming and its citizens will live with a species they have recovered.

The ESA working group created by the Natural Resource Committee has asked for an open and honest discussion and seeks to answer the following questions:

#### **How is ESA success defined?**

This is one of the major problems within the ESA. To some success is simply the listing of a species; to others, success is not achieved until a listed species is once again removed from Federal protections.

Here is a story recently ran on FOX5 news from Las Vegas, NV about the Desert tortoise.

[http://www.fox5vegas.com/story/23256865/desert-tortoise-faces-threat-from-its-own-refuge#.UhunqKDj\\_WE.gmail](http://www.fox5vegas.com/story/23256865/desert-tortoise-faces-threat-from-its-own-refuge#.UhunqKDj_WE.gmail).

#### **DESERT TORTOISE FACES THREAT FROM ITS OWN REFUGE**

For decades, the vulnerable desert tortoise has led a sheltered existence.

Developers have taken pains to keep the animal safe. It’s been protected from meddlesome hikers by the threat of prison time. And wildlife officials have set the species up on a sprawling conservation reserve outside Las Vegas.

But the pampered desert dweller now faces a threat from the very people who have nurtured it.

Federal funds are running out at the Desert Tortoise Conservation Center and officials plan to close the site and euthanize hundreds of the tortoises they’ve been caring for since the reptiles were added to the endangered species list in 1990.

Officials expect to put down more than half the 1,400 tortoises at the research and holding facility in the coming months in preparation for closure at the end of 2014.

Is this success?

#### **How do we measure ESA progress?**

I believe this is another problem within the ESA as no current process requires an assessment or process to determine if progress is being made. The ESA, some would argue, is more about stopping progress than it is about protecting species. Listing is a well-defined and relatively simple process; whereas, removing a species from Federal protection is anything but defined. Often, in Wyoming, we have seen the goal posts moved once a species has met recovery goals and new bench marks have been established.

**Is the ESA working to achieve its goals?**

The first paragraph in your email introduction states clearly: "The Endangered Species Act (ESA) was created four decades ago in 1973 to preserve, protect and recover key domestic species. Since that time, over 1,400 U.S. domestic species and sub-species have been listed. Most species remain on the list and hundreds more could potentially be added within just the next 2 years." It would appear as though the mission of the ESA has continued to expand without ever having actually achieved many of its goals.

**Is species recovery effectively prioritized and efficient?**

With a recovery rate of around 1 percent for species listed as threatened or endangered; clearly, it would cause the common person to conclude that the ESA is flawed and anything but efficient. It would also appear as though the purpose has expanded beyond preserving, protecting and recovering key domestic species to include all species.

**Does the ESA ensure the compatibility of property and water rights and species protection?**

It would appear as though more weight is given to species protection over that of property and water rights. I know of local businesses which have been negatively impacted by indirect impacts associated with continued protections of recovered species. The town of Dubois, Wyoming has probably suffered more than any other town in Wyoming.

**Is the ESA transparent, and are decisions open to public engagement and input?**

The ESA has definitely become much more than transparent. Some organizations, it would appear, have been able to turn the ESA and some species into a cash cow. Decisions are open to the public and input is readily obtained; however, it would appear as though nothing carries as much weight as litigation. This in turn causes the public to lose faith in the process and I believe puts species more at risk because the public is pushed aside by those who benefit from species listing. Notice I said listing not recovery of the species. Once a species is delisted or removed from Federal protections, it can no longer be a cash cow.

**Is litigation driving the ESA? Is litigation helpful in meeting ESA goals?**

As a member of a group that has been forced to turn to litigation in order to get fair consideration of Wyoming's wolf management plan I can state that litigation is necessary at times. However, I do wonder whether or not litigation is driving the ESA. Unfortunately, as I stated earlier, I believe some organizations attempt to stop delisting from occurring as recovered species don't seem capable of generating money as do species which remain listed and under current threats, whether those threats are real or imagined.

**What is the role of State and local government and landowners in recovering species?**

I believe it was the intent of those who created the ESA to involve State and local government as well as private landowners; however, I believe their role has been greatly diminished due to the lack of understanding of the powers they have under the ESA. Landowners should be more involved with recovery efforts as successful recovery efforts are more likely to occur if landowners and affected communities rally around threatened or endangered species.

**Are changes to the ESA necessary?**

Yes, I believe that the ESA is in need of some changes.

*Possible Solutions*

States should be given equal status with the USFWS and decisionmaking powers should be equally shared between the Secretary of Interior and Governor of each respective State.

States are better suited to manage our wildlife resources than the U.S. Fish and Wildlife Service (USFWS). States are already paying the costs for species recovery. States are better suited to work collectively with effected communities and assess and understand the actual economic impacts. The USFWS adds complexity to the process and allows litigants to search for courts that are far removed from the impacted areas and thus easier to manipulate.

One need only look at how the wolf delisting has occurred in Wyoming to see an exact example of the debacle the ESA has become. From the very beginning Wyoming has been thwarted from implementing a plan the people of Wyoming desired.

It is ultimately Wyoming citizens which will ensure that the species remains recovered. It is the Wyoming citizens which have been obligated to shoulder the cost; both indirectly and directly. It is our wildlife resources which are being sacrificed on the altar of wildlife worshipers because some would prefer to feed wild animals rather than allowing Wyoming's citizens to be fed via our own wildlife resources. It is Wyoming's citizens which are faced with the possibility that someone else may determine our fate.

Couple this with the fact that Wyoming is spending on average \$1 million a year managing grizzly bears even though this species has surpassed recovery goals, was delisted in 2007 only to be relisted by people that are not tasked with paying the management costs nor forced to live daily with the potential threat of a grizzly bear encounter. The USFWS orders the destruction of several grizzly bears every year yet hunting them is unacceptable. The truth is that sportsmen were and remain the first conservationists. We put our money where our mouths are, so to speak.

#### *Single Species Management Does Not Work*

Congress needs to amend the ESA to stopped single species management from trumping management of the whole ecosystem. One of the problems within the ESA is that it forces one species to take a higher priority over the complete ecosystem and other species within it. There are a lot of examples of how good intentions have led to bad outcomes simply because by protecting one species we have altered the natural balance. If something is NOT changed soon, we will soon see species being listed as a direct result from species which Congress has either protected via treaty or granted protections under the ESA.

Wildlife populations are highly variable. By granting protections to some species, the ESA is potentially causing some species to be maintained at much higher densities than would have naturally occurred. This in turn may be causing significant impacts to species from increased competition for food, space and water. It also may cause some species to be more at risk of predation since some species appeared to have been more migratory in the past, are now becoming year round residents. An example of this would be raven's (protected under the Mexican Bird Treaty) and sage grouse (a species currently under threat of listing).

#### *Unfunded Federal Mandates*

The ACT states; encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's *international commitments* and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

**The ESA is costing States millions of dollars.** In Wyoming, grizzly bears have a price tag of approximately \$1 million per year. The USFWS has contributes \_\_\_\_\_ per year toward grizzly bear management costs.

What recourse currently exists for States to recuperate the costs of a listed species? As I stated earlier, the States are task with both the burden and cost of protecting a listed species; yet, the ESA is protecting that species for the entire Nation. More needs to be done to understand the actual costs of the ESA to affected States.

#### *Government Accountability*

The USFWS also needs to be held accountable for commitments they make. Wyoming was told that wolves would have no economic impact to the State; yet, countless people have been impacted by the Nonessential Experimental Population of gray wolves foisted upon the State. People should not be told there will be no economic impact and then left to suffer under continued protections of a recovered species. How is the USFWS held accountable for statements they make at the onset to listing a particular species? It appears as though they can make any statement and then simply walk away once the process has started.

#### *Human Health and Safety*

Human health and safety also seems to be something that needs to be added to the ESA. As the grizzly bear distribution map I presented shows, grizzly bears are

expanding beyond their Primary Conservation area and their identified suitable habitat. This will continue to cause an increase in human/grizzly bear conflicts. Is it acceptable for the USFWS to put human lives at risk? Can we honestly state that the constitutional guarantee that no person or class of persons shall be denied the same protection of the laws that is enjoyed by other persons or other classes in like circumstances in their lives, liberty, property, and pursuit of happiness when only a very few States subject their citizens to the risk of a grizzly bear encounter we continually endure in our State?

Another issue is with regards to diseases associated with Nonessential Experimental Population of Gray Wolves; *Echinococcus granulosus* (E.g.). I have included a letter from the USFWS to an individual which had contacted U.S. Senator John Barrasso (R-WY). While the letter is meant to dispel concerns about this tapeworm, it also leaves some questions unanswered. How much more at risk are those which live in close proximity to wolves than those which live elsewhere? Once again, are we as westerners being exposed to threats that other U.S. citizens are not? It appears that more research should have been conducted prior to gray wolves being introduced. Congress needs to ensure that the ESA cannot continue to create different classes of people nor put human lives at risk by exposing them to threats imposed upon them by the continued protection of recovered species.

The Congress finds and declares that the United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

- (A) Migratory bird treaties with Canada and Mexico;
- (B) The Migratory and Endangered Bird Treaty with Japan;
- (C) The Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
- (D) The International Convention for the Northwest Atlantic Fisheries;
- (E) The International Convention for the High Seas Fisheries of the North Pacific Ocean;
- (F) The Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
- (G) Other international agreements.

How do the grizzly bear, wolf, and other species discussed here today fit into the international intent of the ACT?

We are the envy of the World because of our abundant and rich wildlife resources.

Thanks for your time and service in the U.S. House of Representatives and for the opportunity to provide my thoughts and comments pertaining to the ESA and its impact on Wyoming's Sportsmen and Sportswomen.

The CHAIRMAN. I want to let you know that I can give a little time, but a little time.

Mr. WHARFF. Thank you again.

The CHAIRMAN. Thank you for your testimony.

I would now like to recognize Ms. Renée Taylor, owner of Taylor Environmental Consulting here in Casper.

Ms. Taylor, you are recognized for 5 minutes.

**STATEMENT OF RENÉE C. TAYLOR, OWNER, TAYLOR  
ENVIRONMENTAL CONSULTING LLC, CASPER, WYOMING**

Ms. TAYLOR. OK. I want to thank the committee for inviting me here this morning. I have a small consulting business here in Casper, and I have been active in the environmental industry one way or the other for the last 30 years, and with the ESA directly.

I will explore some of the frustrations that I have seen and felt with the ESA and the impact it has on effective species conservation, jobs, property, and multiple use based on my experience with the Preble's Meadow jumping mouse and the greater sage grouse.

Frustrations with the ESA generally fall into three categories, the selective use of data and research, ESA decisions driven by litigation and settlements, and the lack of consideration for public participation and conservation actions.



In August, you heard from Dr. Ramey about the data requirements of the act. ESA decisions are to be based on the best available data, not outcomes that are founded on data that is unavailable and therefore cannot be tested or replicated.

Similarly, we see the ever-increasing use of predictive modeling to determine outcomes well into the future. However, the Service never tests these models to determine if they are real-world, accurate situations. Instead, the Service deems them accurate and demands conservation action based on them.

Selective use of peer and non-peer-reviewed literature is also an issue to us. The agencies tell us that all information used for decisionmaking must be peer reviewed. However, in agency decisions we often see select non-peer-reviewed materials, including gray literature, alongside peer-reviewed works, while data provided by industry or private parties is often ignored.

Moving conservation targets are also an issue for us. The mitigation bar is continually being revised as a result of “emerging information.” We never allow an ESA or conservation decision to play out long enough to see if the findings were correct or if the applied mitigations actually work.

Agency response to our concerns is that the sky is falling and we must do whatever we can to conserve the species if we do not act immediately. This is not sound science.

Section 4 of the ESA contains timeframes for completing the various statutory phases of the listing. If the Service actually adhered to these timeframes, the vast majority of the litigation could be avoided.

Settlements between a plaintiff and the U.S. Fish and Wildlife Service are generally crafted in a vacuum and targeted toward the outcomes desired by the plaintiff. The potentially affected parties—States, tribes, landowners, business entities, et cetera—should be, must be included in these deliberations. We saw the outcome of this closed process again last week with the settlement between the Service and the Center for Biological Diversity regarding the Mexican wolf in Arizona and New Mexico.

Settlements between the Service and plaintiffs, such as that in 2011 with Wild Earth Guardians and the Center for Biological Diversity, which requires the Service to reconsider listing decisions and to specify the timeframes within which they should do so, not only allows the plaintiffs to set the agency’s priorities but takes staff away from more pressing conservation issues such as agreements with landowners and States who are trying to work within the act and the associated regulatory systems.

Litigation-driven outcomes end up with decisions being made by individual judges on information provided by often special-interest select experts. Judges are not supposed to be making scientific decisions within the ESA.

Local and State conservation efforts are ignored or co-opted by negotiated settlements, and Section 6 of the ESA directs the Service to work with States and to accept applicable and appropriate State conservation programs.

Because of the lack of time, I am going to skip a whole lot relative to the Preble’s Meadow jumping mouse, but please be assured that this is a perfect example of what is wrong with the ESA, and

litigation dragging outcomes. This mouse should not be listed in the State of Wyoming. Sorry about Colorado.

[Laughter.]

Mr. LAMBORN. Apology accepted.

[Laughter.]

Ms. TAYLOR. The greater sage grouse is another example of things going awry. The State of Wyoming has done its job through its MOU with the Fish and Wildlife Service, BLM and the other States to enact conservation planning for the greater sage grouse in its State and on a local and statewide basis. Because of what I will call the conservation NGO's don't like our conservation plan, and they don't like the fact that the Service does not list species, they constantly take the species to court, where Judge Winmill is directing the Service and the BLM in how they are to do their sage grouse decisions. This is not appropriate.

A significant portion of the range is a huge deal. That is how the Service was forced to vacate its de-listing of the Preble's Meadow jumping mouse, because the significant portion of the range policy that was in service was vacated, and Wyoming could get sucked into a sage grouse conservation program through listing because there is no significant portion of the range policy.

The fact that you have this strong, stable sage grouse population and conservation practices that work should not punish you by being listed. You should be rewarded by not being listed.

The State of Wyoming and its conservation partners, its citizens, have worked for 10 years to come up with a viable conservation plan.

Thank you, sir.

[The prepared statement of Ms. Taylor follows:]

PREPARED STATEMENT OF RENÉE C. TAYLOR, OWNER, TAYLOR ENVIRONMENTAL  
CONSULTING LLC, CASPER, WYOMING

I will explore the frustration with the ESA and the impact it has on effective species conservation, jobs, property and multiple use using two species I am very familiar with; Preble's meadow jumping mouse and greater sage-grouse.

Our frustrations with ESA generally fall into three categories, (1) selective use of data and research, (2) ESA decisions driven by litigation and settlements and (3) lack of consideration for public participation and conservation actions:

- In August, you heard from Dr. Ramey about the data requirements of the Act, "the best scientific and commercial data available." ESA decisions are to be made based on the best available data, not outcomes that are founded on data that is unavailable and therefore the outcomes cannot be replicated and the data cannot undergo additional testing through the scientific method.
- Similarly, we see the ever-increasing use of predictive modeling to determine outcomes well into the future; however, the Service never tests these models in a real word situation to determine if the modeled outcomes are accurate. Instead the Service deems them accurate and demands conservation action based on them.
- Selective use of peer and non-peer reviewed literature by agencies (i.e. FWS and BLM). We are told by FWS that all information used in their decision-making must be peer reviewed; there is nothing in the act about only peer reviewed materials being considered. However, in agency decisions we often see select non-peer reviewed materials, including gray literature, being cited alongside peer reviewed works. While data provided by industry is often ignored.
- Moving conservation targets: The mitigation bar is continually being revised as a result of emerging information. We never allow an ESA/conservation decision to play out long enough to see if the findings were correct or if applied mitigations work. Our response is always "the sky is falling and the species

is going to blink out” if we do not act immediately. Mother Nature does not react like that.

- Section 4 of the ESA contains timeframes for completing the various statutory phases of species listing. If the Service actually adhered to these timeframes the vast majority of the litigation could be avoided, it is the slipping of these requirements that provides the opportunity for settlements that leave other interested and potentially affected parties out of the loop.
- Settlements between a plaintiff and the USFWS are generally crafted in a vacuum and targeted toward the outcomes desired by the plaintiff. The potentially affected parties (States, tribes, landowners, business entities, etc.) must be included in these deliberations. We saw this again last week with the settlement between the Service and the Center for Biological Diversity regarding the Mexican wolf in Arizona and New Mexico.
- Settlements between the Service and plaintiffs, such as that in 2011 with Wild Earth Guardians and Center for Biological Diversity, which requires reconsideration of species listing decisions and specifying the timeframes within which to do so, not only allows the plaintiff to set the agencies priorities but takes staff away from more pressing issues such as conservation agreements with landowners and States who are trying to work within the act and associated regulatory system.
- Litigation driven outcomes with decisions being made by individual judges based on information provided by often special interest selected “Experts,” during settlement hearings/conferences.
- Local and State conservation efforts are ignored or co-opted by “emerging science,” negotiated settlements and litigation. Section 6 of the ESA directs the Service to work with States and to accept applicable and appropriate State conservation programs, among other things.

1. *Preble's Meadow Jumping Mouse (PMJM or *Zapus hudsonius preblei*)*

- (a) 1998—Listed in Colorado and Wyoming, listing was preceded by significant trapping effort in Colorado but only one trapping event in historical range of the species in Wyoming.
- (b) 1999—a private landowner in SE Wyoming came forward to conduct an extensive trapping program in the historical range and in habitats that were “similar” to those where the subspecies was found in Colorado. Resulting in the capture of 33 individuals, 24 more than the Wyoming historical record.
- (c) FWS gathers a “Recovery Planning Team” which meets extensively for the next 5 years with no measurable outcome.
- (d) June 2003—FWS designates critical habitat in Wyoming and Colorado for the subspecies.
- (e) December 2003—Dr. Ramey determines the PMJM is not a unique subspecies.
- (f) December 2003—State of Wyoming filed their first petition to delist.
- (g) February 2005—FWS publishes proposal to delist PMJM in Wyoming.
- (h) 2006—Dr. King (USGS) determines the PMJM is a unique subspecies.
- (i) FWS enters into a hand selected peer review panel process to “evaluate” the genetics work completed by Drs. Ramey and King; FWS “Peer Review” panel is initiated on two occasions.
- (j) Sept. 2006 (through Oct. 2007)—Wyoming files notice of intent to sue FWS over non action on the 2005 petition to delist.
- (k) 2008—Delisted in Wyoming.
- (l) 2009—Petition filed by Center for Native Ecosystems, followed by a court order, to re-instate regulatory protections for PMJM in Wyoming based on issues related to the definition of “significant portion of the range” (SPR).
- (m) August 2011—to comply with the Court Order the PMJM is re-listed in Wyoming based on vacating the FWS policy on SPR.
- (n) December 2011—the Service and National Marine Fisheries Service notice of draft policy regarding application of SPR; the Service has yet to finalize the rule defining this critical piece of the act, which would allow them to list species only where they are at greatest risk.
- (o) May 2013—Again, (from the 2011 settlement agreement) a court ordered date by which to conduct the 5-year status review and (finally) address the two petitions to delist received in 2003 (FR Vol. 78, No. 101, pg. 31680). The status review again re-iterates the lack of risk to the species in Wyoming from oil and gas development, farming and livestock ranching. But stresses the potential impact from human population growth in the four Wyoming counties where PMJM is found, revealing a 13 percent increase (20,410 people) by 2030 including the concern that Cheyenne might grow by 8,372 soles. The review also discusses the potential negative effects on PMJM habitat from climate

change and fire. These outcomes are derived through modeling efforts extending out 30 to 50 years and completely ignores the fact that fires and climate change have occurred over the range of the species since it came into existence. Not to mention that population growth of 20,000 persons is minute and will generally not occur within Preble's habitat. Based on these findings the Service determined that the risk to the species is significant therefore it could not de-list the species in Wyoming.

All this is over a mouse that Gwilym Jones, in his 1981 encyclopedic review of the Genus *Zapus*, states "There is no evidence of any population of *Zapus hudsonius* (ZH) being sufficiently isolated to warrant subspecific status" (Jones 1981). What Dr. Jones points out is that these 14 to 19 "subspecies" of *Zapus hudsonius* are really races, not subspecies worthy of ESA protection.

Genetics has a long history of the argument between "Lumpers" (Dr. Ramey) and "Splitters" (Dr. King). ZH is ripe territory for such arguments but so are domestic cats and dogs. Basically, following the same logic used to determine that the PMJM is a unique subspecies, we could also demonstrate that your cat and mine are separate subspecies and one or the other may be worthy of ESA protection. As Dr. Taylor Haynes, so eloquently stated at a Preble's Recovery Team meeting, "A species being rare or uncommon does not equal a species at risk of extinction and ESA protection."

Another important point brought out by Dr. Jones (1981) is that "populations of the progenitors of the (*Zapus*) genus were isolated by the thawing of the glaciers and associated meltwaters with further isolation of groups occurring during periods of environmental drying." So much for the "climate change" we discuss today being a unique event in the history of the earth. Indeed, climate change is one of the natural forces of evolution. Sadly, the Service determined it could not recognize the work of Dr. Jones, or his 569-page dissertation, as it was not "peer reviewed."

This mouse is the perfect example of everything wrong with ESA, initial decisions based on little or no data, private parties have to do the work of the Service to collect the necessary data. The bright spot in the story is that the FWS staff acknowledged the new data and the cooperation of landowners, eventually amending the listing decision based on a petition from the State. Unfortunately, as we see so often, the special interest NGO's don't like sound, on the ground science-based decisionmaking and sued for a re-evaluation of the delisting; eventually ending with the court ordered listing of a species in an area where no risk to the species has been documented. Special interest driven decisions are the outcome and completely ignore the potential impacts to the very people who have provided habitat for the species while also providing jobs and food for the Nation and their families.

## 2. Sage-grouse

The greater sage-grouse story in Wyoming generally starts in 1999 when the game and fish departments in States within the range of the species, BLM and USFWS enter into an Memorandum of Understanding to look at the species and what could be done to conserve it. The States were tasked with developing State and local level conservation plans; these were to address conservation taking into consideration local economies, impacts and habitats. This story begins with the threat of the ESA, do something to conserve the species or we will have to list it!

Wyoming completed its statewide plan in 2003 and immediately set about the local planning process. All these workgroups included members from the oil and gas and mining industries, wildlife biologists, private landowners, agriculture, "conservation" NGO's, local government, NRCS, WGFD and the BLM, with the Service in attendance. These planning efforts were completed and evolved into an Executive order issued by Governor Freudenthal in 2008, with the goal of maintaining or enhancing the sage-grouse population in designated Core Population areas. This EO has been amended twice since 2008 with the latest in 2011 (SWED 2011).

In a 2011 letter to Governor Mead, the USFWS stated it "continues to view implementation of the Executive order as an adequate mechanism to preclude the need to list this species and if the Executive order remains a sound policy to manage and protect sage-grouse populations in Wyoming. The Service believes the Executive order can result in the long-term conservation of the Greater sage-grouse and thus reduce the need to list the species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). If fully implemented, we believe the Executive order can provide the conservation program necessary to achieve your goal of precluding listing of the Greater sage-grouse in Wyoming."

The BLM Washington Office IM 2012-043 further affirmed the Wyoming Core Population Area Protection process by stating, "The BLM field offices do not need to apply the conservation policies and procedures described in this IM in areas in which (1) a State and/or local regulatory mechanism has been developed for the con-

servation of the Greater Sage-grouse in coordination and concurrence with the USFWS (including Statewide Executive Order 2011-5, Great Sage-Grouse Core Area Protection; SWED 2011); and (2) the State sage-grouse plan has subsequently been adopted by the BLM through the issuance of State-level BLM IM.”

In February 2012 the BLM Wyoming State Office issued IM WY-2102-019, Greater Sage-Grouse Habitat Management Policy on Wyoming BLM Administered Public Lands Including the Federal Mineral Estate. This IM provides guidance to BLM Wyoming field offices regarding management consideration of greater Sage-grouse habitats for proposed activities until the resource management planning amendments are completed. This IM is consistent with the Washington IM mentioned above and the State Executive order.

The Wyoming Conservation Strategy, as described in the EO, is premised on the concept of managed development of oil and gas, mining and wind energy in Core Population areas, those areas of the State with the most robust populations of sage-grouse. Approximately 86 percent of the grouse in the State receive enhanced protection under this program. The Core concept was based in large part on research findings that illustrated that sage-grouse and oil and gas development can and do co-exist (Taylor et al. 2007 and 2011). Publically available Wyoming data was used in this effort to determine under what conditions grouse exhibit a decline or avoid an area. The EO then used other Wyoming based research findings, relative to avoidance of oil and gas operations, and buffered this information to provide an added conservation cushion.

A key component of the Wyoming conservation strategy is the analysis of all projects, that require a State or Federal agency permit, proposed within a “Core Population Area.” This GIS analysis of disturbance and disruptions (DDCT) evaluates the level of existing and proposed surface disturbance and disruptions (active well sites and or mining locations) within 4-miles of a sage-grouse lek (the definition of the analysis area is more complicated than this). In my experience, these analysis areas can be quite large, for example 55,000 acres to evaluate the effect of fewer than 10 new well sites. If the proposed project will not exceed the disturbance and disruptions limitations stipulated in the Executive order the project receives a “concurrence” or “go-ahead” letter from the WGFD. In the event the project analysis reveals that these limitations will, or already are exceeded, the WGFD and the BLM (if involved), work with the proponent to reduce/mitigate impacts to the species. This process needs to be followed for a number of years so we can determine if it works to “maintain or enhance” sage-grouse populations in the State of Wyoming. Only after the program is tracked and the population data analyzed over a good number of years (3 year running average as stated in the Wyoming Conservation Strategy) should we make any changes.

All that said, none of this is adequate enough for the “conservation” NGO’s who continue to pound the table with new emerging research “demonstrating” that the EO and IMs are not adequate. They continually take their case to U.S. District Court Judge John B. Lynn Winmill, who has mandated BLM consider the National Technical Team (NTT) Report (BLM 2011) in the process of amending nine BLM Resource Management Plans to more fully address sage-grouse conservation. Similarly, the NGO’s have demanded, and BLM capitulated, that a “Recovery Alternative” be considered. Neither of these “conservation” strategies recognizes the valid existing rights of oil and gas lessees, the rights of private landowners, and the resource based economies of the State or the multiple use mandate of the BLM. They certainly do not recognize that in Wyoming oil and gas, agriculture and sage-grouse have co-existed quite nicely for over 100 years.

Long story short, regardless of the broad based public process and cooperation that went into the development of the Wyoming sage-grouse conservation program or the endorsement of the Wyoming concept by USFWS and BLM, the threat of the ESA listing is constantly hung over the issue and used as a battering ram to force more stringent conservation measures to be implemented.

As with the PMJM, the definition of SPR and a clear policy for its use is of critical importance to the State of Wyoming. Without the ability to identify and provide listing protection to the species in those areas where it is truly at risk due to a lack of conservation effort, Wyoming could end up included in a listing decision because of its strong and stable grouse population and conservation practices. This would effectively punish the State and its citizen partners for their hard work in developing and implementing grouse conservation.

The courts should not control the outcome of the ESA. ESA decisions should rely solely on the best available data not the professional opinion of folks with a conservation bias. Sage-grouse represents one of, if not the largest, voluntary conservation efforts in the history of ESA but this could all be lost if the court and special interest plaintiffs are allowed to direct the outcome. I suspect that if this were to

happen the Service would be hard pressed to garner much public support in the future. The Service should acknowledge the tremendous level of public participation and effort that has gone into the range wide conservation of sage-grouse and allow it to play out. The BLM (in the case of sage-grouse) and the Service constantly kowtow to the demands of the litigants who use the courts to move forward their case leaving those that have participated honestly in the regulatory process in the dust.

In closing, I must admit I am not an advocate of opening up the ESA; I have grave concern about the effort being taken over by special interests, just as has occurred with ESA to date. The USFWS must be directed to operate as was originally conceived in the act; sound science based on the best available data. The ESA contains timeframes for acting on petitions, if the Service were to abide by these constraints there would be little fodder for litigants. And last, in this era of bio-politics, when cohorts of researchers control the published literature and therefore the conservation outcome, any change in the ESA will not affect the apparent lack of scientific integrity. Regardless of the good intentions of this committee, honesty in the use of the scientific method cannot be legislated.

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The CHAIRMAN. You are very perceptive.

[Laughter.]

The CHAIRMAN. Thank you very much. Your comments on the Preble mouse are in the written statement, so it is part of the record.

Ms. TAYLOR. Thank you.

The CHAIRMAN. I would now like to recognize Mr. Jeff Meyer, the Managing Partner for the Sweetwater River Conservancy in Alcova, Wyoming.

Mr. Meyer, you are recognized.

#### **STATEMENT OF JEFF MEYER, MANAGING PARTNER, SWEETWATER RIVER CONSERVANCY, ALCOVA, WYOMING**

Mr. MEYER. Good morning, Mr. Chairman, and welcome to Wyoming. It is a pleasure to join you, Congressman Lummis, and your colleagues to talk about species protection, jobs, property, and multiple use. I am Jeff Meyer, the Managing Partner of the Sweetwater River Conservancy.

The Sweetwater River Conservancy is headquartered 40 miles southwest of Casper on the Pathfinder Ranch. It is comprised of nine working cattle ranches located along the North Platte and

Sweetwater Rivers. The SRC lands total 712,000 acres, an area a little bit larger than the State of Rhode Island.

Today these historic lands offer a powerful platform to realize three groundbreaking ideas: first, an idea to bring willing land-owners and investors together to expand the protection of Wyoming's iconic wildlife; second, an idea to help Wyoming capitalize on its abundant natural resources; and third, an idea to demonstrate how keeping intact landscape-size parcels of private land is good for business.

Earlier this year, with the full support of the State of Wyoming, SRC submitted applications to the United States Army Corps of Engineers to create a Wetland, Stream, and Riparian Mitigation Bank, and the U.S. Fish and Wildlife Service to create a Sage Grouse Habitat Conservation Bank, all on SRC-owned lands. We will submit a third application for a raptor bank later this year. These banks will be the first of their kind in Wyoming and the largest ever in the United States.

The enactment of the Clean Water Act and the Endangered Species Act in the 1970s set the stage for our strategy today. These laws were motivated in part by the loss of critical habitat and the fragmentation of large landscapes. Today, four decades later, the debate surrounding the implementation of this legislation continues to rage and the time for new thinking seems ripe.

To protect critical habitat, regulators apply the principle of no net loss and condition the issuance of a permit on the ability of a developer to mitigate the consequences. They require the developer to, first, avoid the impact when possible; second, minimize the impact; and third, compensate for unavoidable impacts. But without a clear way to meet these requirements, a project can languish for years or be derailed altogether.

Within the third category, compensatory mitigation, we believe SRC will make a constructive contribution toward the goals of the ESA.

SRC lands are home to high-quality habitat for the greater sage grouse, raptors, black-footed ferret, and several other plants and animals that are being carefully monitored by the U.S. Fish and Wildlife Service. Throughout the past 5 years, over 100 scientists have spread out over our ranches to catalog these resources. They worked their way over four mountain ranges, 70 miles of major river frontage, across hundreds of miles of side streams and tributaries, and through tens of thousands of acres of sagebrush scrub lands. This unparalleled body of knowledge served as the basis for the applications we recently submitted.

Once approved, we will actively restore and enhance the water quality and wildlife habitat on our lands using private capital and following strict scientific protocols approved by a task force of State and Federal regulators. These improvements, known as "lift," will create certified credits that can be used by developers to offset the impacts of energy projects elsewhere in the same geographic service area.

The price for these credits will be negotiated on a willing seller/willing buyer basis. No one will be obligated to buy them, and developers will have the option of doing their own compensatory mitigation or contracting with others. It is our business assumption,

however, that by investing heavily in the preapproved, up-front mitigation, we will have an appealing product that adds valuable clarity and predictability to the permitting process.

But adding clarity and predictability is not the only benefit to the SRC mitigation banks. The benefits are much wider. One, neighboring ranchers who partner with us will have a new source of revenue by managing their lands for both cattle production and wildlife enhancement.

For the conservationist, SRC's unique approach supports habitat conservation across large landscapes, creating an ecologically compelling solution and an unrivaled product. Sportsmen will continue to have access to our lands and enjoy higher populations of game and fish. Regulators will have a credible new tool that enables them to protect species and promote multiple use of public lands. And finally, these improvements will be financed by private investors and will not rely on Federal appropriations or tax credits to succeed.

Thank you.

[The prepared statement of Mr. Meyer follows:]

PREPARED STATEMENT OF JEFF MEYER, MANAGING PARTNER, SWEETWATER RIVER  
CONSERVANCY, ALCOVA, WYOMING

Good morning Mr. Chairman and welcome to Wyoming. It is a pleasure to join you, Congressman Lummis, and your colleagues to talk about species protection, jobs, property and multiple use. I am Jeff Meyer, the Managing Partner of the Sweetwater River Conservancy.

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Earlier this year, with the full support of the State of Wyoming, SRC submitted applications to the U.S. Army Corps of Engineers to create a Wetland, Stream, Riparian Mitigation Bank and to the U.S. Fish and Wildlife Service to create a Sage Grouse Habitat Conservation Bank, all on SRC ranch lands. We will submit a third application for a raptor bank later this year.

These banks will be the first of their kind in Wyoming and the largest ever permitted in the United States.

The enactment of the Clean Water Act and the Endangered Species Act in the 1970s set the stage for our strategy today. These laws were motivated in part by the loss of critical habitat and the fragmentation of large landscapes. Today, four decades later, the debate surrounding the implementation of this legislation continues to rage and the time for new thinking seems ripe.

To protect critical habitat, regulators apply the principle of “no net loss” and condition the issuance of a permit on the ability of a developer to mitigate the consequences. They require the developer to first, avoid the impact when possible; second, minimize the impact; and third, compensate for unavoidable impacts. But without a clear way to meet these requirements, a project can languish for years or derail altogether.

Within the third category, “compensatory mitigation”, we believe SRC will make a constructive contribution toward the goals of the Endangered Species Act.

SRC lands are home to high quality habitat for the greater sage grouse, raptors, mule deer, black footed ferret, and several other plants and animals that are being carefully monitored by the U.S. Fish and Wildlife Service. Throughout the past 5 years, over 100 scientists have spread out over our ranches to catalogue these resources. They worked their way over four mountain ranges, along 70 miles of major river frontage, across hundreds of side streams and tributaries, and through thousands of acres of sagebrush scrub lands.



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The price for these credits will be negotiated on a “willing seller—willing buyer” basis. No one will be obligated to buy them and developers will have the option of doing their own compensatory mitigation or contracting with others.

It is our business assumption, however, that by investing heavily in “pre-approved” up front mitigation, we will have an appealing product that adds valuable clarity and predictability to the permitting process.

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For conservationist, SRC’s unique approach supports habitat conservation across large landscapes creating an ecologically compelling solution of unrivaled import.

Sportsmen will continue to have access to our lands and enjoy higher populations of game and fish.

Regulators will have a credible new tool that enables them to protect species and promote multiple use of public lands.

And finally, these improvements will be financed by private investors and will not rely on Federal appropriations or tax credits to succeed.

Today, the SRC mitigation banks are proposed only on private lands. But it is possible, with supporting public policy, to imagine a time when a land owner, using private capital, could improve the habitat on the BLM grazing lands he leases and share the revenues from the mitigation banks with the Federal Government. That’s another big idea for Wyoming’s landscapes and wildlife.

Thank you.

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The CHAIRMAN. Thank you very much, Mr. Meyer. You did not go over time, so we will credit that back.

[Laughter.]

The CHAIRMAN. And now, certainly not least, I would like to recognize Ms. Meghan Lally, who is a sheep and cattle rancher in Savery, Wyoming.

Ms. Lally, you are recognized.

**STATEMENT OF MEGHAN O'TOOLE LALLY, SHEEP AND  
CATTLE RANCHER, SAVERY, WYOMING**

Ms. LALLY. Good morning, Chairman Hastings and members of the committee. Thank you to Representative Lummis for inviting me to speak to you this morning. I am Meghan O’Toole Lally, and I am a fifth-generation sheep and cattle rancher. I raise sheep and cattle on our family ranch, located on the Wyoming-Colorado border, along with my parents and brother. I serve as a Supervisor on the Little Snake River Conservation District and have recently been appointed to the Wyoming Environmental Quality Council.

We pride ourselves on our management of our ranch, as well as our private, State, and Federal leases. The Ladder Ranch is under conservation easement and has been designated as an Important Bird Area by the Wyoming Audubon Society.

This summer, my daughter Siobhan and I were gathering cattle in the forest. A sage grouse and several of her chicks flew up in front of us. The mother sage grouse proceeded to act as a decoy. She acted hurt and flew in the opposite direction of her chicks. Siobhan asked me what the mother grouse was doing. I explained that she was trying to draw us away from her chicks so that they

may survive if we were predators. I love being able to see these neat birds and give these lessons to my children.

When I was a kid growing up on the ranch, we would see lots of wildlife daily on the bus ride to school. I had no idea until I left the valley that everyone did not have the same wildlife experiences growing up. My children continue to have those same experiences on the school bus today.

The Endangered Species Act is broken. The problems are numerous. The solutions exist that are working. They can be expanded to a national scale.

The decisions are made for listing habitat needs or species needs. It is imperative that the Fish and Wildlife Service use peer-reviewed science to make decisions.

The State of Wyoming formed the Wyoming Statewide Big Horn/Domestic Sheep Interaction Working Group. It included people representing all interested parties. The stated goal of the group was to maintain healthy bighorn sheep populations while sustaining an economically viable domestic sheep industry in Wyoming.

The Wyoming Plan, as it is known, is a model for how to address domestic sheep/Big Horn sheep management in the West. It allowed areas where Big Horn sheep would be the priority and there would be no domestic sheep. There were also areas for domestic sheep grazing. Several of our sheep grazing permits are in that area. Recently, Biodiversity Conservation Alliance sued the Forest Service over a small herd of Big Horn sheep located near our grazing permit.

Right now, the Federal Government is increasing the amount of red tape and analysis of habitat projects before they can be implemented on the ground. It used to take 3 to 6 months to get a project approved, funded, and on the ground. Now the agencies are saying that we need to plan on at least a year for all of the extra analysis needed for even simple projects.

The intention by the adopters of the Endangered Species Act is that incentives should be used to encourage the preservation of species. I believe that the adage that you catch more bees with honey than with vinegar needs to be the aim of the Fish and Wildlife Service. In that spirit, I offer the following solutions.

I believe that collaborative processes are a great tool for increasing the success of the implementation of the Endangered Species Act. The Wyoming Plan is an example of a win-win plan for everyone. Without the Wyoming Plan, constant litigation would be the future between the Big Horn Sheep advocates and the domestic industry. The Game and Fish would not be able to expand the habitat for the Big Horn sheep, and the State of Wyoming would lose an industry which contributes to the economy of the State. However, under the plan, the Game and Fish has an avenue to introduce Big Horn Sheep to other parts of the State, which will increase the overall numbers of Big Horn sheep.

There needs to be an acknowledgement that in order to preserve these endangered or threatened species or preclude listing at all, that work needs to be done on the ground immediately. Simplifying the paperwork from dozens of pages to a reasonable application, allowing ground-level managers to make decisions, and increasing the number of technicians on the ground to get the work done

would streamline the process and make it easier to get work done in a timely manner.

Congress has the power to list species under the Endangered Species Act. I think one solution is to preemptively list sage grouse as warranted but precluded for existing management plans. Industry and agriculture crave stability. State plans for sage grouse management are currently offering up stability while protecting sage grouse in areas where they currently exist and are thriving.

There is a group within the Fish and Wildlife Service called Partners for Fish and Wildlife. The Partners for Fish and Wildlife helps to fund habitat work on private lands. They already have the infrastructure and relationships with landowners to get effective habitat work done for endangered species. The Partners for Fish and Wildlife is uniquely positioned to fulfill the direction of the Endangered Species Act for the Fish and Wildlife Service to manage the designated endangered species.

There needs to be a recognition that if a species exists and thrives on a property, public or private, the practices that currently occur on that property will not harm and possibly protect that species.

The Endangered Species Act is an important part of saving animals from becoming extinct. However, right now it is being used as a hammer to destroy livestock grazing and industry in the West. Not only does this affect the public lands management, it also affects the economies and culture of the communities where it is applied.

Thank you for this opportunity to present testimony to you.

[The prepared statement of Ms. Lally follows:]

PREPARED STATEMENT OF MEGHAN O'TOOLE LALLY, SHEEP AND CATTLE RANCHER,  
SAVORY WYOMING

Good morning, Chairman Hastings, and members of the committee. Thank you to Representative Lummis for inviting me to speak to you this morning. I am Meghan O'Toole Lally and I am a fifth generation sheep and cattle rancher. I raise sheep and cattle on our family ranch, located on the Wyoming-Colorado border, along with my parents and brother. I serve as a Supervisor on the Little Snake River Conservation District and have been appointed to the Wyoming Environmental Quality Council.

We pride ourselves on our management of our property, as well as our private, State and Federal leases. The Ladder Ranch is under Conservation Easement with the Nature Conservancy in Wyoming and Colorado Cattlemen's Land Trust in Colorado. The ranch has also been designated as an Important Bird Area by the Wyoming Audubon Society.

This summer, my daughter Siobhan and I were gathering cattle in the forest. A Sage Grouse and several of her chicks flew up in front of us. The mother grouse proceeded to act as a decoy. She acted hurt and flew in the opposite direction of her chicks. Siobhan asked me what the mother grouse was doing. I explained that she was trying to draw us away from her chicks, so that they may survive, if we were predators. I love being able to see these neat birds and give these lessons to my children.

When I was a kid growing up on the ranch we would see Mule Deer, elk, Pronghorn Antelope, Golden and Bald Eagles, Sage Grouse, as well as squirrels, rabbits and other small birds daily on the bus ride to school. I had no idea, until I left the Valley that everyone did not have the same wildlife experiences growing up. My children continue to have those same experiences today.

The Endangered Species Act is broken. Right now there are 630 animal species and 854 plant species that have been listed as threatened or endangered in some form. There are another 74 species that have been proposed for listing and 168 candidate species. Of those only 1 percent have been delisted. Obviously we are doing something wrong. Listing hundreds of species without adequate science and without

a plan for recovery beyond “all human activity is bad” will not improve our track record. There are two types of groups working on the problems in the West. The hopefuls and the hatefuls. The hopefuls are trying to work toward collaborative solutions that meet everyone’s needs. The hatefuls want to litigate and derail the process. The problems are numerous; solutions exist that are working, if they can be expanded to a national scale.

The Candidate Conservation Agreement with Assurances (CCAA) concept is a good one for landowners who enter into it willingly with their eyes wide open. However, the CCAs and CCAAs that I am aware of have taken 10 years to even get the applications processed. Very few exist at all. Many people who were interested in the program decided not to participate because they expose themselves to litigation and regulation with no legal, court tested guarantees. Until landowners can enter into agreements with the Fish and Wildlife Service without fear of being sued or the rules and regulations changing midstream, most landowners will not be willing to commit to provide habitat for and protect threatened or endangered species.

Litigation by hateful groups threatens the procedural rules set by the rulemaking process. Sue and Settle has been used by the Center for Biological Diversity (CBD) to force the candidate listing of 168 species. Contrary to CBD stated insistence on a procedurally correct, transparent process on the part of Federal agencies, Sue and Settle is an opaque process that is not subject to public comment or review.

In Wyoming, we have experienced hateful groups filing the same or similar lawsuits in several venues. They choose which venue they would like their lawsuit to be heard. Then the other suits are dropped. This happened recently in the current round of grey wolf litigation.

When decisions are made for listing, habitat needs, or species needs, it is imperative that the Fish and Wildlife Service use peer reviewed science to make decisions. When the agency uses ideas and hunches to make decisions it could have wide ranging impacts that have no positive effect on the target species. If there is any question as to the validity of the science, the National Academy of Science needs to be consulted.

When it became apparent that hateful groups were using Big Horn sheep to remove domestic sheep grazing from public lands in the West, Wyoming decided it needed to be proactive. The State formed the Wyoming State-Wide Big Horn/Domestic Sheep Interaction Working Group. It included people representing all interested parties, including Wyoming Wool Growers, Wyoming Game and Fish Department, the Wild Sheep Foundation, environmental groups, sheep producers and others. The stated goal of the group was “to maintain healthy bighorn sheep populations while sustaining an economically viable domestic sheep industry in Wyoming.”

The Wyoming Plan, as it is known, is a model for how to address domestic sheep/Big Horn sheep management in the West. It was adopted in 2004. It allowed areas where Big Horn sheep would be the priority and there would be no domestic sheep. There were also areas for domestic sheep grazing. Several of our sheep grazing permits are in that area. Recently, Biodiversity Conservation Alliance (BCA) sued the Forest Service over a small herd of Big Horn sheep located near our grazing permit. This herd was deemed non-essential by the Game and Fish and the Working Group. The herd was reintroduced in 1977. The grazing permits in that predate that time by several decades. There are several other permittees who could also be impacted by the decision that any possible contact by domestic sheep to a Big Horn sheep means the loss of a permit. Biodiversity Conservation Alliance used that same law firm that is used by Western Watersheds for their litigation in Idaho.

Unfunded mandates are negatively affecting wildlife agencies. The Federal Government regularly hands down unfunded mandates on endangered species management that the State wildlife agencies then have to try to implement. These mandates affect the management of other species within the State, which may endanger them in the future. It also strains the budgets of these agencies. The States then need to make up the money poured into these mandates. Many times this may result in increase in license fees to make up the shortfalls.

By restricting the legal historic activities that can take place on private property; I believe that the Endangered Species Act is being used to perform an illegal takings of that private property.

Right now the Federal Government is increasing the amount of red tape and analysis of habitat projects before they can be implemented on the ground. It used to take 3-6 months to get a project approved, funded and on the ground. Now the agencies are saying that we need to plan on at least a year for all of the extra analysis for even simple projects. There is a historic irrigation ditch on our ranch, dug by hand and with mules at the turn of the century by my great-grandfather. We are slowly piping the ditch, for efficiency and also to preserve the integrity of the

ditch. We had a Federal archeologist tell us we may not be able to continue to pipe the ditch without archeological analysis because it is a historic structure.

In section 2(a)(5), the Endangered Species Act states that “The Congress declares and finds that—in encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation’s international commitments and to better safeguarding, for the benefit of all citizens, the Nation’s heritage in fish, wildlife, and plants.”

This clearly indicates an intention by the adopters of the Endangered Species Act that incentives should be used to encourage the preservation of species. I believe that the adage that “you catch more bees with honey than with vinegar” needs to be the aim of the Fish and Wildlife Service. In that spirit I offer the following solutions.

I believe that collaborative processes are a great tool for increasing the success of the implementation of the Endangered Species Act. The Wyoming Plan is an example of a win-win plan for everyone. Without the Wyoming Plan, constant litigation would be the future between the Big Horn Sheep advocates and the domestic industry. The Game and Fish would not be able to expand the habitat for the Big Horn sheep and the State of Wyoming would lose an industry which contributes to the economy of the State. However, under the plan, the Game and Fish has an avenue to introduce Big Horn Sheep to other parts of the State, which will increase the overall numbers of Big Horn Sheep.

There needs to be acknowledgement that in order to preserve these endangered or threatened species or preclude listing at all that work needs to be done on the ground immediately, not 2 or 3 years from now. Water developments, fence mitigation, sage brush treatments, and fish passages or barriers are all examples of important habitat work that could be done now to preserve endangered species habitat. Simplifying the paperwork from dozens of pages to a reasonable application, allowing ground level managers to make decisions, and increasing the number of technicians on the ground to get the work done would streamline the process and make it easier to get work done in a timely manner.

There is a group within the Fish and Wildlife Service called Partners for Fish and Wildlife. The Partners for Fish and Wildlife helps to fund habitat work on private lands. They already have the infrastructure and relationships with landowners to get effective habitat work done for endangered species. They have projects on the ground all over the country doing work to preserve habitat for toads in Nevada, Sage Grouse in Wyoming, and the Mountain Plover in Colorado, as well as many others. The Partners for Fish and Wildlife is uniquely positioned to fulfill the direction of the Endangered Species Act for the Fish and Wildlife Service to manage the designated endangered species.

Some producers—working with local conservation groups—have expressed interest in adding endangered species habitat enhancements to water projects. Examples include habitat improvements to recharge basins and riparian areas near ditches, hedge rows on fields, etc. Others have sought add native habitat improvements specifically to open up access for local endangered species. However, the restricted application of safe harbor rules by Government agencies has forced many proponents to abandon their efforts.

Recognition that if a species exists and thrives on a property—public or private—the practices that currently occur on that property will not harm and possibly protect that species. Sage grouse are vulnerable to predators. Areas where people run sheep tend to have heavy predator control. Based on my own observations, there are many thriving Sage Grouse leks within our lambing areas. I believe that the predator control that takes place on our lambing grounds has helped to keep the sage grouse in those areas healthy.

Tools exist within the Endangered Species Act itself. Habitat Conservation Areas, Safe Harbor provisions, section 6 cooperative agreements with the States, and 75–90 percent match for any work done by the States for endangered species management and habitat improvement.

The Endangered Species Act is an important part of saving animals from becoming extinct. However, it is being used as a hammer to destroy livestock grazing in the West. Not only does this affect the public lands management, it also affects the economies and culture of the communities where it is applied.

The purposes of the Endangered Species Act “are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species.”

It clearly states that the original intent of the Endangered Species Act was a good one. Saving species from extinction is important. However, it has been hijacked by the hateful groups to attack industries and people

I love seeing the Sage Grouse dance and watch the chicks follow their mothers through the brush. I also want my children to have the same opportunities to see these birds. I am doing everything I can to preserve the habitat for the Sage Grouse. However, I can see by listing the Sage Grouse under the Endangered Species Act, it may actually cause a reduction in Sage Grouse Habitat and people on the ground doing everything they can to coexist with them.

Thank you for this opportunity to present testimony to you.

The CHAIRMAN. Thank you all. I want to thank you all, and I do know how difficult it is to repeat your remarks on an issue like this. I fully recognize that, and that is why under our rules, your whole statement—and I read all of your statements, and they were all longer than 5 minutes, except for Mr. Meyer. I think yours was longer than 5 minutes, too. But at any rate, I appreciate that is part of the record. It is important that we have this as we go forward, we have this evidence coming from these areas.

We are starting the questioning period for Members, and I am going to defer to my colleagues here who are more immediate in this geographical area, and I will follow up last. If we have time, we will do a second round.

So I will start by recognizing my colleague from Wyoming, Representative Lummis.

Mrs. LUMMIS. Thank you again, Mr. Chairman. And I would also want to thank my chief of staff, Jeffrey Fagan, who is here; Jackie King from our staff in Casper; Ryan McConaughy from our staff in Casper, and also want to acknowledge the presence of Wyoming State Treasurer, Jeff Gordon—Mark Gordon.

[Laughter.]

Mrs. LUMMIS. You are racing cars these days, Mark. Great job of course as Wyoming State Treasurer. I am delighted to see you here Mark.

Questions for our fabulous panel. I want to start with Jeff Meyer. Mitigation making is something I do see as part of a 21st century conservation strategy that could make a huge difference.

Now, I have two questions for you. One is, tell me the difference between doing mitigation on a very small scale versus a landscape scale such as you are doing. And also, how does what you are doing dovetail with or differ from current policies?

Mr. MEYER. So really, all science today points to—and I think Fish and Wildlife is accepting, beginning to accept this—that, you think about it, the landscape scale per acre, there is more for us to develop the larger your contiguous property. We call it the economies of contiguousness. The greater lift you get per acre for both habitat and species. And since, if you read the rules, that this land has to be managed in perpetuity for the species for which the mitigation predator sold, by having all that in one area, it makes it more economically viable not only to do it but the odds of success for the future just really are greater, as opposed to having small, 100-acre, fragmented, postage-stamp projects located all through the State.

And it is important in Wyoming, if you think about it, to locate these banks where there are very few to no oil and gas or other carbon that could be extracted, which is why we picked our ranches

where we are, where we have them, which is, again, in kind of an interval as far as an oil- and gas-free area.

As far as how does it differ from the current policy, really I think that with the interim memorandum that I think came out from Bureau of Land Management in May, they are starting to see the idea that the Government can't do everything, and for the first time they are also recognizing the opportunity to mitigate for impacts on Federal land by private property holders.

So I would really say the contiguousness, the big landscape properties are important also to the rancher because Wyoming ranching culture is such an important part of this State. It allows ranches to become contiguous ranches, as opposed to ranchettes. And for the sportsmen, it allows an area that is really managed for game and fish. So the opportunity for increased hunting opportunities and fishing opportunities is something that will never be found when mitigation is done on fragmented pieces of property.

Mrs. LUMMIS. So it monetizes the conservation of land.

Mr. MEYER. It allows the rancher to monetize the habitat value of his ranch. That is correct.

Mrs. LUMMIS. Thank you. It is an impressive property, and I hope you all get to see it at some point.

A question for Ms. Taylor. You mentioned predictive modeling is never tested but it is used. So how can we set recovery goals without predictive modeling? What would be a good standard at the beginning of the listing process for what constitutes recovery so they can't be automatically de-listed, instead of having the constant moving of the goal posts when we have already achieved the initial goal for de-listing?

Ms. TAYLOR. Well, I think there are two different things. I think it may not have been clear. When I think about predictive modeling, I go specifically back to either sage grouse or the Preble's. In the recent de-listing or re-listing of Preble's and the reevaluation of the 5-year status review that came out in May of this year, they used predictive modeling to determine population growth in the four southern counties of Wyoming where the mouse lives and cited that a 20,000-person growth over the next 30 years would be a negative impact on the species. They also thought that the predictive modeling that determined climate change or fire frequency over the next 50 years would be an issue for the species.

It is that kind of modeling, or the predictive modeling for things like the sage grouse that says what the impacts are way out over time. It is not based on the species and their reactions but patterns. So that is what I am looking at.

Mrs. LUMMIS. Thank you very much. My time has expired, and I appreciate your clarification. Thank you.

The CHAIRMAN. We will surely have time for another round.

At this time, I recognize Mr. Lamborn from Colorado.

Mr. LAMBORN. Thank you, Mr. Chairman. Thank you for having this hearing.

I would ask unanimous consent that our whole opening statements be included in the record.

The CHAIRMAN. Without objection, that will be part of the record.

Mr. LAMBORN. OK. Thank you.

Commissioner Hendry, I am going to ask my first question to you. I drove in from Laramie this morning, where my daughter and her family live, and I just loved driving through your county, the beautiful, wide-open spaces. You have a great place here.

Mr. HENDRY. Thank you, Representative, and we think we do. We are right in the heart of Wyoming, and Casper right now is doing pretty well.

Mr. LAMBORN. Well, I want to compliment the whole State of Wyoming because I think your policies are balancing environmental concerns and energy and jobs and the things that help make a better standard of living for people. You are a State that gets it, and I wish Colorado could learn some things from you.

And I want to thank Cynthia for playing a leading role in helping to make that happen as we go forward.

Mr. HENDRY. Well, our agriculture and tourism and oil and gas and extracting industries, they not only make Wyoming operate but they make the rest of the country operate as well.

Mr. LAMBORN. Now, specifically, recently the Obama administration finalized a rule ignoring significant opposing comments in the 10th Circuit Court of Appeals and letters from many of us in Congress on how it must conduct economic analyses for critical habitat designations. The rule will require Federal agencies administering the ESA to only analyze cost of the actual habitat designation while ignoring all other costs associated with listing a species. What would that do to rural and western areas of our country?

Mr. HENDRY. Well, Representative, I think that the socio-economic factors in all things are something that the Commissioners Association really pays attention to. Our communities are based on these industries that we have here, and if you list, say, the wolf, it is not only a detriment on livestock but it is those dollars that turn over in the economy, over and over. Those are the kinds of things that affect our local economy. The Preble's mouse, they are talking about some oil and gas, some shale development down in southeastern Wyoming and Colorado. We could get into a deal where they couldn't do some of that activity, the normal course of human activity, because of that mouse, and that is economic development in those areas.

Mr. LAMBORN. OK, thank you.

Ms. Taylor, I want to follow up with you on the mouse that we are talking about. How would you characterize the current trend of ESA sub-level species and distinct populations? How is that going, and is that based on sound science?

Ms. TAYLOR. The mouse is an extremely interesting discussion relative to genetics, the genetics work that has been done. There was research in 1981 that led to a doctoral thesis that demonstrates that, of the 19 different supposed sub-species of the mouse, that there is really no valid sub-species separation between them. Genetics work was done on a number of mice, a huge number of mice, on tissue samples in 2003, and again this was determined that sub-species designation of the Preble's was inappropriate.

A contingent of researchers was then hired by the Fish and Wildlife Service to reevaluate all of that data, and they determined that it was appropriate to have that sub-species.



The issue comes down to how we discuss genetics over time. Are they individual races? Are they separate sub-species? Are these things valid? And making determinations on a significant portion of the range, which is what happened with Wyoming and Colorado, can be important for separating out where a species or sub-species might be at risk versus where it is not at risk, and in Wyoming it is not at risk, and the Service has documented that numerous times. Yet, they had to, through litigation and the vacating of significant portion of the range, had to re-list. So that is not appropriate.

Mr. LAMBORN. OK. Thank you very much.

The CHAIRMAN. I thank the gentleman.

I now recognize the gentleman from Montana, Mr. Daines.

Mr. DAINES. Thank you, Mr. Chairman.

Thank you to an outstanding panel. It makes me proud to be a westerner, the way of life and the culture that we have. I appreciate the comments, the passion, and the common sense that we heard this morning. We don't hear that very often back in Washington, DC, so thank you for that.

This issue, talking about the jumping mouse, talking about the greater sage grouse, these are critically important issues. I watched my State, the western part of our State, see its industry decimated, and the ESA has been one of the underpinning arguments by these fringe groups that is creating wildfire risk. We have more active forest fires today in Montana than anywhere else in the country, as we speak. These issues we are talking about are critically important for our future.

I would like to start off by directing a question here to Mr. Hendry. I love the comment about the 40-year-old ESA, the old pick-up, as far as ESA serving a useful purpose but in bad need of repair. That is well said. Montana is undergoing its own planning process for sage grouse conservation as we speak. Could you reiterate for me the importance of the involvement of local communities and industries in the planning process for the greater sage grouse? We need to take some of this learning certainly to Montana. If we could learn from you, what would you say?

Mr. HENDRY. Well, the sage grouse core area is—and Ms. Taylor has been involved in this quite a bit also—developed through government and everybody working together, developed a plan that marked the core areas, the areas that sage grouse could really utilize within the State. So if you decide to work in that, if you have to work your energy in that area, ranching or anything else, you have to adhere to certain rules that protect that sage grouse.

Outside that area, there are still a few rules, but it is not as intrusive, I guess, on your business. Although we have about 70 percent, 60 to 70 percent public land, the Bureau of Land Management and the Forest Service, they treat the sage grouse as if it was protected now. So it hampers our ability to do business in those areas that are really not in our sage grouse core areas.

But it was developed by the State of Wyoming and everybody working together. Not all people like the sage grouse core area strategy, but it is a strategy in order to try to keep that bird from being listed.

Mr. DAINES. We hunt sage grouse in Montana. I assume—

Mr. HENDRY. We do here, too.

Mr. DAINES. The season opened up 4 days ago, a two-bird limit.

But I would like to ask a question of each of you that goes back to this reform of the ESA. You all have been involved in that process far more than any of us up here have been. I came to Congress with a business background in the private sector, and we focus on results and outcomes versus activities.

If you could change one thing to reform the ESA—we all agree it is a 40-year-old process that needs reform. If you want to volunteer a second level, I will take that as well. What would it be? I will start with Mr. Hendry and work our way across.

Mr. HENDRY. I would say it would be tied to crucial habitat for whatever species that you are talking about listing. That can have far-reaching effects. So crucial habitat would be one of them, and have that right up front so we know what we are dealing with when the listing is put in.

Mr. DAINES. I am out of time. We are going to have a second round; is that right?

The CHAIRMAN. Finish that real quick.

Mr. DAINES. All right.

Mr. Wharff?

Mr. WHARFF. I guess, going back to my days in law enforcement, I guess the one thing that I see lacking is the common man principle. I mean, I think there are a lot of things within the ESA that the common man theory would definitely help, because some of the things just don't make sense that we see being done under the Endangered Species Act.

Mr. DAINES. What would that specifically look like?

Mr. WHARFF. I guess put common sense back into it. I think that the ESA started out very good, and I think it has morphed, as is typical with some government programs. I guess the nature of the beast is to expand, mission creep, and I think we need to push back and make it focus on what the purposes were, and I think that is putting the common person back into it. If it doesn't make sense, why do we do things? Sometimes I think that is what is lacking.

Mr. DAINES. OK. Thank you.

Ms. Taylor? This is hard, I know.

Ms. TAYLOR. I would go back to actually something that Meghan said and I think that others said, and that is that when there is a State conservation program where the State has worked to develop with its folks a State conservation program, the Service should be required to follow that. They should acknowledge it, they should accept it, and they should watch how it plays out over time.

Mr. DAINES. Thank you.

Mr. Meyer?

Mr. MEYER. The ESA should be based on science and not politics.

Mr. DAINES. Thank you.

Ms. Lally?

Ms. LALLY. I will reflect what Renée said.

Mr. DAINES. Can you pull the microphone closer, Ms. Lally? Thank you.

Ms. LALLY. I will reflect what Renée said. State-based collaborative processes done by people within the State that know what is important are what need to be followed.

Mr. DAINES. Thank you.

The CHAIRMAN. I will now recognize myself.

I want to ask this question specifically to Ms. Lally and Mr. Meyer. In previous testimony in front of our committee, and I have said this publicly, it seems to me that the ESA has become a litigant's dream. That is where all of the activity is. And two of the major litigants, the Center for Biologic Diversity and the Western Watershed, both of them say that they have to have their lawsuits. Otherwise, conservation would never happen on whatever species they are trying to effect.

So what is your response to those who are always litigants? Would any conservation happen lacking Federal threats of litigation?

We will start with you, Ms. Lally.

Ms. LALLY. Well, I will go back to the example that I am fairly familiar with on the wild sheep. Wyoming came up with a plan, and it was a plan that was agreed on by the domestic industry, environmental groups, as well as the Wild Sheep Foundation, and it was working. The wild sheep were protected, and so was domestic industry. When the lawsuit took place by the Biodiversity Conservation Alliance using Western Watershed lawyers, all of a sudden everybody said, well, this doesn't hold in the Wyoming plan.

The Game and Fish Department would like to reintroduce wild sheep in other portions of Wyoming. If this happens, it will be fought tooth and nail to allow another wild sheep anywhere else in Wyoming, and those wild sheep that will be introduced will increase the population exponentially more than can occur that is currently not doing well anyway.

The CHAIRMAN. So, if I understand this correctly, what you are saying is you would have a disproportionate population of wild sheep that probably could not be sustained from your perspective. Does that—

Ms. LALLY. The Game and Fish has decided that that herd cannot thrive. They have never done well since they were introduced in the 1970s. They have never done very well, and they would prefer to focus on populations that are thriving and growing, as opposed to populations that are contracting. And so to say 50 to 70 sheep, they want to basically hijack the process so that those 70 sheep can survive and no other sheep can be introduced anywhere else because nobody else will allow it.

The CHAIRMAN. OK, thank you.

Mr. Meyer?

Mr. MEYER. I grew up in a farming community in Iowa, very similar I think to the ranching community here. We grew up and I hunted, I fished almost every day of the year, with or without lawsuits or anything else. If you are a rancher, it is part of your culture to maintain the wildlife on your ranch. I mean, it is like you are going to do it whether—if somebody tells you I won't like it very much, but you are going to do it anyway.

So, I believe that ranchers and really user groups, Ducks Unlimited and the success that they have, the Rocky Mountain Elk Foundation, have had a great impact because we are the folks who are really out on the land and the ones that are recreating. So it is

hard for me to imagine that under any circumstances we would want to damage the thing that we enjoy most.

The CHAIRMAN. I kind of suspected that would be your answer. I mentioned that I come from central Washington. It is the Columbia Basin Project and the Yakima Valley Project in our district. Those were our very first agriculture areas that were irrigated, and I have always felt that the farmers are the best stewards of the land, because if you are not a steward of your land, you are not going to have a crop. And these crops are rotated on a regular basis for a variety of reasons, and so forth. But I always thought the notion that a farmer would go out and waste a whole bunch of money on pesticides or something like that, which is the perception in some parts of the world, is totally erroneous.

But to your point, Ms. Lally, what you are simply saying, I think, if I can capsulize that, is these decisions, if they can be made on a local level, are probably better for whomever is affected by these decisions. Is that a fair assessment of where you are coming from?

Ms. LALLY. Absolutely, as well as the wildlife.

The CHAIRMAN. OK. My time is now expired, and so we will start a second round.

Mrs. Lummis, you are recognized.

Mrs. LUMMIS. Thank you, Mr. Chairman.

I would like to ask whether primacy at the State level, as is sometimes used for environmental regulations, would be something that would be useful for inclusion in the Endangered Species Act, the notion that the State can take primacy from the Federal Government in the implementation through, for example, a habitat conservation plan. Would anyone just volunteer to answer that?

Ms. TAYLOR. I think the concept of primacy relative to the Endangered Species Act is one that is very intriguing. I am not sure where the State of Wyoming would come up with the funds to be able to afford it. We would have to look at that very closely, because right now it is the sportsmen who provide the funding for the Wyoming Game and Fish Department, and right now the Wyoming Game and Fish Department is who is managing sage grouse and the gray wolf and the grizzly bear.

The whole idea of primacy goes back to what we were saying about if the States have a valid conservation program, it should be accepted and allowed to play out, and that is already allowed within the Endangered Species Act. We should accept it and we should strengthen that.

Mrs. LUMMIS. Ms. Lally, you mentioned that approving habitat projects is too slow at the Federal level.

Ms. LALLY. We have an old ditch on our ranch. It was hand-dug by mules by my great-grandfather. And we are slowly piping it in order to strengthen the ditch and also increase efficiency so there is less water loss to evaporation.

So we applied for NRCS money to do that, and we were told by an NRCS archaeologist that they would need to take a year to do a study because that is an historic structure.

Mrs. LUMMIS. The ditch is an historic structure.

Ms. LALLY. The ditch is an historic structure. That ditch has been in nearly continuous use the whole time. So all of a sudden

there are all these extra hurdles put in so that we are not able to get work that we know will help the wildlife.

Mrs. LUMMIS. Mr. Meyer, you created wetlands in Sweetwater, and you have also altered spring ditches to make improvements in the water quality. Could you explain a little bit about that?

Mr. MEYER. Sure. So one of our goals is to—in Wyoming in the wintertime when it snows, and in the spring runoff, a lot of the irrigation ditches that used to be streamed—and for good reason, they were irrigation ditches, because the ranchers use them to irrigate their crops. So what we try to do is we try to reengineer the streams to the way they were, but at the same time put in high water efficiency techniques; for instance, rubberizing the ditches before they get into the actual captures. They can save sometimes 50 percent of your water. So that at the end you have more water for the fish, and cleaner water, and more sub-irrigation for your ranch, as well as a higher, efficient use of the water rights that the ranch internally owns.

So really we just try to—and a lot of ranchers are still watering kind of like the Egyptians used to do, with flood irrigation. And all we are trying to do is figure out how to kind of balance what the fish and wildlife needs with what the rancher needs, and in most cases we are seeing more tonnage grown per acre just by using the new techniques and using our water more efficiently.

Mrs. LUMMIS. Mr. Wharff, can you mention some environmental groups that you have been able to work with to help recover species or decline opportunities for hunting with them, a species recovery exercise?

Mr. WHARFF. That is difficult. I work with a lot of different groups, and I think the biggest challenge is pulling everybody to the middle. Any time you get to extremes, that is when you kind of tend to tread in dangerous territory. But I honestly can't think of a lot of groups who have actually sat down and came to resolutions. To me, it is a process, and I really have not felt like most of the environmental groups are actually looking to see species removed. I think they prefer to keep them listed. It is a cash cow in many instances.

But I guess it depends, too, on how you look at some groups. Some groups are classified as conservation groups, whereas in my opinion they are probably more environmental oriented.

Mrs. LUMMIS. Thank you, Mr. Chairman.

The CHAIRMAN. I recognize Mr. Lamborn.

Mr. LAMBORN. Thank you, Mr. Chairman.

Mr. Wharff, I would like to follow up with you on some points you raised earlier. I think there are some inconsistencies with the Endangered Species Act that need to be addressed as we look to make it better.

Are there species that are considered threatened or endangered in the United States that are found more commonly in other countries such as Canada?

Mr. WHARFF. Yes, Mr. Chairman. As that map demonstrates, the gray wolf is probably the most offensive thing that I have seen. First of all, it is a species—we had populations of native wolves that were here. They say it was actually made in 1937, yet we had confirmed sightings in 1993. To me, that is the tragedy. We

brought a species of this, looking at the map, that was anything but threatened on a worldwide basis, and look what we put at risk. Those species that I identified—the elk, the moose, and the big horns—Mr. Hendry here can tell you what the costs are to the livestock because we know how many we have.

Wildlife management is not an exact science. We have no idea of the exact cost. But to me, that is the best example that I see, is a species where the actions weren't really warranted, in my opinion. When you look at the cost imposed upon the States that are burdened, it makes absolutely no sense to me.

Mr. LAMBORN. Does the Fish and Wildlife Service introduce animals into areas and then say these are to be protected even when that is not their original habitat?

Mr. WHARFF. Mr. Chairman, yes. My understanding is some of the States have been told that the Mexican gray wolf—I know some of my friends in Utah told me the Mexican gray wolf has never been documented in that State, that they are being threatened with being saddled with recovery of that species of wolf that historically has never had any record that it existed in that State.

Mr. LAMBORN. Do you know anything about the snowshoe lynx?

Mr. WHARFF. I can't say that I do. I know about the history of snowshoes and the lynx, but I don't know about a snowshoe lynx. [Laughter.]

Mr. WHARFF. I am sorry.

Mr. LAMBORN. There is some concern that it is being introduced into areas where it was never originally found, and now there is an obligation to keep it protected with its impact on tourism, fishing, hiking, hunting, energy, and all these other ramifications.

Mr. WHARFF. I keep going back to the wolf, Mr. Chairman, because, to me, that is the one I am most familiar with. This is a species that hunts in larger packs than the species that are wildlife-evolved. The species they brought from the north is a little bit bigger because they are in northern climates. They are more conditioned to hunt in packs, and there are added advantages that they have that our species are forced to contend with, and it does upset that balance when you take something that wasn't indigenous and force it. It gets right back to the people who live with that burden are the ones who are obligated and tasked with recovery. In some instances, it may not really be a species that really fits.

Mr. LAMBORN. Is there any resistance among environmental advocacy groups to practice—like the State of Colorado, for instance—of raising endangered and threatened species, like fish species, in captivity and then releasing them into the wild to buildup the population? I think we have learned that is not always embraced by environmental groups. Do you have any insight on that?

Mr. WHARFF. Mr. Chairman, I guess there is a link that when it is reared by them, that it loses its wild significance. But I like what Wyoming was able to accomplish with the black-footed ferret. That is a species that Wyoming saved, the black-footed ferret, not the Endangered Species Act. I do think that is the thing that is important. I think we have to think outside the box sometimes and see what works.

There is a reluctance, and of course you do run into issues with contamination and disease. There are a lot of factors when we start

talking about raising things. Natural systems work best. They are more cost-efficient. But, yes, I look at some of these and question that if, in fact, the true goal is recovery, I would think anything that we can do to recover that species should be pursued, within reason.

Mr. LAMBORN. Absolutely, and why it is not always embraced, I don't understand. If, like you said, you really want to conserve that species, that is what we are really after. Thank you.

Mr. WHARFF. Thank you.

Mr. LAMBORN. I yield back.

The CHAIRMAN. Mr. Daines?

Mr. DAINES. Thank you, Mr. Chairman.

We kind of talked about the lack of clarity with the ESA in terms of what constitutes recovery to get these species de-listed. Mr. Meyer, in your testimony you talk about protection of critical habitat, what needs to be done to receive permanent approval on a project in critical habitat. You talk about how the developer must minimize the impact of the area. You mention in your testimony there are not clear guidelines which can make achieving habitat protection and conservation through adequate level difficult. Your testimony also focused on solutions oriented more toward local ranchers.

So my question is, how important is it to the local land users, the ranchers, the resource developers, et cetera, to have the flexibility to conserve or improve the land to the appropriate standards that best fits their land use purposes?

Mr. MEYER. Let me see if I got that question. I will give you my answer. My feeling on it is that we are all blessed by different things. Some ranches are blessed with oil and gas, and others are blessed with sage grouse habitat. And I guess it is my belief that the rancher who is blessed with sage grouse habitat and not oil and gas should have the opportunity to monetize that habitat as opposed to being penalized and not being able to do anything with it. That is really kind of what we are trying to do.

We have met with, I would say, 80 percent of the energy companies within Wyoming who are all very supportive because what they want to do—the perception is that the energy companies want to destroy the environment, which is kind of ridiculous at this point, right? But they want to extract energy and make money for their shareholders, and they want a clear-cut way to be able to do that, and all we are trying to offer is a better mouse trap, and our better mouse trap is why don't you go to where you have large areas of great habitat and allow those areas to be paid by the private developers to offset their impacts where they are drilling a well or putting in a horizontal platform?

Currently, and I think I am right on this, I think there is a 5 percent—is that what it is?—5 percent inside a section that you can use, but that includes all historical impacts. So that includes the ditch your great-grandfather dug. It is not new impacts that the energy company has. It is new impacts on top of all historical impacts. So in many cases, especially on Federal land, it almost makes a site unpermissible.

So all we are trying to do is really offer a solution to that. And as Congressman Lummis said, conservation for the 21st century. I

believe it can be private based. It does not need to be government based. The government is good to assist, but I don't know that everybody has to have their hand held as we walk down the path together.

Mr. DAINES. It reminds me of the two biggest lies that we hear in Montana and Wyoming. The first one is when somebody from DC comes and says, "We are here to help." And the second one is when Montanans and Wyomingites say, "We are glad you are here."

[Laughter.]

Mr. DAINES. In light of the complexity that you face, I know you talked about political science versus good science as it relates to species recovery. Mr. Wharff, I think you made a comment about ravens and sage grouse. Could you develop that a little more? Because I have spent time with multi-generational ranchers up in Montana who will tell you that coyote populations, the predator populations with bird raptors, is a significant factor in terms of where sage grouse populations are allowed to go down. But are we introducing ravens? I would like to get your comments there.

Mr. WHARFF. You bet, Mr. Chairman, Representative Daines. That is one of the problems. The Mexican Bird Treaty protects the raven, and it is a treaty that Congress entered into, and it was probably a good thing to do. My recollection was that it was also a way for us to protect the bald eagle, so it was a good treaty, but there are consequences to that.

We found that with the ravens, they used to be more migratory in nature, and you are starting to see that in some climates they are not migrating anymore. They are starting to impact and displace native birds that used to use those ranges, and we are starting to find that a lot of the impacts that we are seeing with sage grouse are attributed to ravens. It is one of those things a lot of people don't think about. They invade the nest, and they will invade the young as well.

So that is one of the problems that I see. I think we have all these good intentions and have done all these things, but nobody has looked at collectively, as a whole, how these things are packaged together. That is why, when you talk about single-species management, that is the big flaw I see in the Endangered Species Act, that nothing is managed by itself. We have all different species that are dependent upon those specific ecosystems, and any time we start providing protection for one species over another, you do upset the balance.

That is one thing we are starting to see. As I mentioned, ravens are not migrating. We are starting to see them establishing in areas where they used to not be, that they just kind of pass through. So there are impacts to those protections, and I don't know that anybody has ever looked collectively at how those things all come together. That is one of the big problems I see. I don't know if that answers it.

Mr. DAINES. It does. One more comment, and then I am done. I appreciate that comment, too, that there is always political science going on back in the Beltway. But we need good, sound peer review, and I think we can make some progress here. So, thank you, Mr. Chairman.



The CHAIRMAN. In the testimony where you mentioned the raven, it reminded me that I mentioned in my opening comment that I come from Washington State, where the timber industry has declined, the timber harvest on Federal land has declined by 90 percent because of the spotted owl. Recently, it was discovered that it was not the lack of old growth that caused the demise of the spotted owl but rather the barred owl, to which the Fish and Wildlife solution was to shoot the barred owl. That is just not common sense. I mean, that just tells you what is wrong. A whole industry has gone away. We have seen that go away.

I want to follow up on something that you had mentioned. You mentioned that if the law could be followed, and you cited a specific timeframe, that a lot of this litigation could be avoided. Could you elaborate on that and maybe explain, if that is the case, then why are we in this situation? What is lacking, I guess?

Ms. TAYLOR. Unfortunately, I think what is lacking is a focus in the way the Fish and Wildlife Service does its business that they address petitions when they come in. There is a petition to list, a petition to de-list. The act does contain timeframes, and you end up with litigation when the Service does not follow those timeframes.

The CHAIRMAN. You mean misses a deadline?

Ms. TAYLOR. Misses a deadline, correct. The act does provide legal fodder when it says we will act in 90 days. I think it says "if feasible" or something like that. There are 90-day deadlines. There are 12-month deadlines. There are a number of different deadlines depending on the portion of the process that you are in. One of them comes back to 5-year reviews or the reviews of species that are determined to be warranted but precluded from listing, and that is a lot of what gives fodder to litigation. You didn't follow that, you didn't meet that deadline; therefore, we are going to force you to meet that deadline.

I am not an advocate for growing the size of the Fish and Wildlife Service. I think that the whole concept of perhaps looking at primacy is not a bad one from the standpoint of being able to say to the States let's look at what is going on in your area relative to the way you are managing a species or how you could manage a species so that you can address these things on your basis in a more efficient manner.

The CHAIRMAN. Well, you mentioned that you are not a fan of opening up the ESA because it may be overtaken by special interest groups. I suppose with any law, there is a threat of that. But if this part of the law is failing because of timeframes, there must be some way, it seems to me, to tighten that up so that won't happen. Now, I don't know what it is, but the way it is right now, it is subject to political pressure; i.e., if you don't want to do anything, you purposely miss a timeframe, opening up a lawsuit. So nothing gets done.

So there has to be a way, it seems to me, and that would, of course, mean opening it up, which is a problem. Would you acknowledge that?

Ms. TAYLOR. I do. I mean, on the one hand, for 30 years I have worked with the ESA, and we have talked many times about potentially opening it up. But then you get to this fear, and that is what

it is, of the process being overtaken and coopted by what I will call the conservation NGO's. They have so much power within the process right now. In fact, they control, in many cases, the peer-review literature. So there is a whole lot of problem with the way the agencies go forward, and you are correct, they delay making decisions so that they can get a lawsuit. We see that in many different aspects of the Federal Government. I mean, the Clean Air Act is a perfect example of that also.

The CHAIRMAN. Well, I guess my point is I was just intrigued by your final statement, you are not a fan of opening it up. Yet, we have problems that we are going to have to somehow address. That is what we are trying to ascertain with these hearings, because the law has not been reauthorized for 25 years, and yet we still enforce it. I dare say if you walk down any main street in any town in Wyoming, or probably any town in this country, and say that there is a law on the books that has not been reauthorized for 25 years, should we enforce it, I doubt if you would get more than 1 or 2 percent to say no, it hasn't been reauthorized. Yet the way we budget back there, because we fund it, it is de-facto reauthorized, and that presents a problem to us to get the other side to sit down and have meaningful discussions.

Well, my time has expired, and we are going to have to leave to go up to Billings. I want to thank the panel very, very much for your testimony. If you have additional thoughts on what was said, if something sparks you, don't hesitate. Please communicate that with us.

Likewise, if we have a question that comes up in our minds that we want to get back to you and ask, please respond in a timely manner to our requests, too.

And for members of the audience, if you would like to weigh in, you can go to the Natural Resources Committee, go to the Web site. I don't know how to do that, but my staff does.

[Laughter.]

The CHAIRMAN. And I know it works because people are communicating with us all the time, so I know it works. So I would certainly invite all of you to participate in any way that you feel.

I also want to say that this is a full committee hearing. Most people recognize that committees are bipartisan in nature. We opened up an invitation to the other side. They could have had witnesses in both this hearing and the hearing we are going to have in Billings. They declined the invitation. So if it sounds like this is only one-sided, I want to tell everybody that this was open. It was designed to be open. This is a full committee hearing for the Natural Resources Committee.

So, with that, once again I want to thank the panelists. You have been a very good audience. I want to thank you for being here, and I want to thank my colleagues also for being here. We will pack up and head up to Billings, and hopefully we will have another robust discussion, as we had here.

So if there is no further business to come before the committee, we stand adjourned.

[Whereupon, at 10:37 a.m., the committee was adjourned.]

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## OVERSIGHT FIELD HEARING ON STATE AND LOCAL EFFORTS TO PROTECT SPECIES, JOBS, PROPERTY, AND MULTIPLE USE AMIDST A NEW WAR ON THE WEST PART II

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Wednesday, September 4, 2013  
U.S. House of Representatives  
Committee on Natural Resources  
Billings, Montana

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The committee met, pursuant to call, at 1:30 p.m., in Cisel Hall, Montana State University-Billings, 1500 University Drive, Billings, Montana, Doc Hastings [Chairman of the committee] presiding.

Present: Representatives Hastings, Daines, Cramer, Lamborn, and Lummis.

The CHAIRMAN. Good afternoon. May I ask everyone to please rise for the posting of the colors?

Relax. Not quite yet. We are missing one person. There you go. Thank you. Gentlemen will hold off. Marines will hold off for just a moment before you post the—there it is.

The House Committee on Natural Resources will come to order. The committee is meeting today in Billings to hear testimony on a hearing called “State and Local Efforts to Protect Species, Jobs, Property, and Multiple Use Amidst a New War on the West.”

Now, by way of introduction, I am Congressman Doc Hastings from the State of Washington. I represent the 4th District, which, for those of you familiar with Washington, it is central Washington from the Tri-Cities to the Oregon border. And Washington State over the years, not exclusively, but certainly has been affected greatly by the Endangered Species Act. We have an ongoing discussion or battle, I might say, as far as the salmon on the Columbia River and its tributaries. And some 20 years ago or more, we had the spotted owl, and we are still suffering from that. So I am familiar with the impacts that the Endangered Species Act would have.

So I am very pleased to be joined by four of my colleagues on the House Natural Resources Committee: Congressman Steve Daines from Montana, your Congressman, Doug Lamborn, who is a Congressman from the 5th District in Colorado, Cynthia Lummis from Wyoming, also an at-large Member, and Kevin Cramer from North Dakota. So I am very pleased that they are here with me today.

But now I would like to defer to my colleague, Mr. Daines, for introductions and the posting of the colors. Mr. Daines?

Mr. DAINES. Thank you, Mr. Chairman. And it is good to be here in Montana. I think most of us here in Montana believe that Washington, DC should look more like Montana, not the other way around.

Well, being that this is a congressional hearing, we are going to begin as we do with every session of the House of Representatives with the posting of the colors and the Pledge of Allegiance.

Please join me in standing to recognize the Eugene Sara Detachment of the Marine Corps League in Billings, who will post the colors. And Tom Hanel, the Mayor of Billings, will lead us in the Pledge of Allegiance.

[Posting of Colors.]

[Pledge of Allegiance.]

Mr. DAINES. Thank you, and you may be seated, please.

I now recognize the Mayor of Billings, Tom Hanel, for a few opening remarks.

Mayor HANEL. Thank you, Congressman Daines, and thank you, each and every one, for being here today. Our special guests, welcome to Billings. Welcome to Montana, a beautiful city.

I would like to say on behalf of the City of Billings, and also a special welcome to all of our guests in the audience, here for such a special meeting. We are very appreciative of also MSUB for hosting this meeting. I want to wish each and every one of you the very best.

And, of course, to our special guests, safe travels to and from. Thank you very much.

**STATEMENT OF THE HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON**

The CHAIRMAN. This hearing, let me just briefly say how the process works here. When we have committee meetings in Washington, DC and subcommittee meetings, members generally make an opening statement not to exceed 5 minutes. We try very hard to keep that within 5 minutes. And we do it by seniority. So since I am the Chairman, I am obviously the most senior member, and I get to start. That is only fair, I think. So when I come with a different lineup here, what you are seeing is the seniority of the members on the Natural Resources Committee.

So let me start by saying that this afternoon's hearing is the second oversight hearing that we have had today. We were in Casper, Wyoming earlier, for a hearing on the Endangered Species Act. And it is another important opportunity to hear specifically from interests that are directly affected by it.

The Endangered Species Act or ESA Working Group that I and Congressman Lummis co-chair, has received hundreds of comments from individuals seeking to reform the ESA. In the coming weeks, the ESA Working Group will hold additional forums to ensure broader input from all areas that are affected by this sweeping law.

Ramped up ESA listings and habitat designations through executive orders in closed door settlements, like the mega settlement in 2011 by certain litigious groups, are affecting private landowners. They are having effects on multiple uses of public lands, Federal lands. It is having effects on agriculture, rural economies, rural timber communities, energy producers lately, and even some States' own species conservation activities.

Montana is certainly one State in the forefront of ESA's impacts. Environmental groups have filed at least 29 ESA-related lawsuits and more than a dozen lawsuits against the Forest Service in Montana over just the past 2 years. Earlier this year, groups sued the Forest Service to block a forest thinning project that would lessen the impact of wildfires in Kootenai Natural Forest.

Threats of lawsuits are delaying job-producing activities for years, such as a mining project in Lincoln County, that have gone through an extensive ESA and NEPA analyses. BLM claim sage grouse are distributed over an astounding 258,000 square miles in portions of 11 States. In Montana, BLM has identified nearly 3 million acres of priority area for sage grouse habitat in portions of 39 of your counties, including oil and natural gas resources in the Williston and Powder River Basins.

Energy producers that support thousands of Montana and North Dakota jobs are concerned with the potential future lease rights in these areas. Ranchers and sportsmen are justifiably concerned about the impacts of grazing and access as well.

Three years ago, this administration's Fish and Wildlife Service determined sage grouse ranked relatively low in priority of candidate species needing Federal protection. Yet the Interior Department negotiated two ESA mega settlements with litigious groups without any input from Congress, without input from affected States, without input from local entities, and started a clock to force hundreds of listings and millions of acres of habitat designations, all for the sage grouse. This is simply not good public policy and demonstrates why ESA is in need of improvement.

I was greatly concerned that a few months ago, BLM issued thousands of pages of Montana resource plans containing sweeping sage grouse measures and shut off public input after just 3 short months. They even refused the Montana delegations to extend public comment. Decisions of this magnitude should not be restricted by environmental lawyers, court calendars, or Federal bureaucrats' marching orders from Washington, DC.

More concerning are the continuing serious unanswered question about BLM's lack of data and science supporting the National Technical Team, or NTT, and other conservation measures BLM and Fish and Wildlife claim are needed for the greater sage grouse.

Recent communications received through the Freedom of Information Act, or FOIA, requested through the State of Idaho suggests potentially serious interference by Interior Department officials leading to the sage grouse initiative. Now, if there is interference, and I am not drawing a conclusion today, but that certainly undermines the credibility of the science use for Federal sage grouse resources. So this committee has found that very, very troubling.

Now, I understand as we are holding this hearing, members of the Governor's Montana Sage Grouse Advisory Committee are meeting to discuss their State's, this State's, conservation efforts. Hopefully their efforts will culminate in development of a much more balanced plan than what the Federal Government's plans are from what we know right now. So I look forward to hearing from our witnesses today and having a robust discussion on ways that we can improve the Endangered Species Act.

And with that, we will go by seniority, as I said, and I will recognize the gentleman from Colorado, Mr. Lummis—or Mr. Lamborn. Lummis is next.

**STATEMENT OF THE HON. DOUG LAMBORN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Mr. LAMBORN. OK. Is this working? Is that better? OK, thank you.

Well, it is great to be here in the beautiful State of Montana, and I appreciate the leading role that my colleague, Representative Steve Daines, has shown on our committee in dealing with these vital issues surrounding our Nation's resources.

Today the House Natural Resources Committee continues our oversight of the Endangered Species Act with a specific focus on State and local efforts to protect species, as well as jobs and private property rights.

The Obama administration through Executive orders, Federal regulation, and settlement driven ESA listings, and habitat designations, is unfortunately waging a renewed war on the West, and has literally shut out Congress, States, local communities, private landowners, and even scientists who may dispute the often unreliable or unverifiable data used for these decisions.

Although borne of the best intentions, the Endangered Species Act has failed to live up to its promise. Although the act was intended to recover species, less than 1 percent—1 percent—of the total number of U.S. species listed have ever been recovered and removed from the list. Of those delisted, most were removed from the list due to data errors or other factors.

Many view the enforcement of the ESA as being driven by litigation or the threat of litigation, which in turn distracts from species conservation. Due to rigid timelines, vague definitions in the act, and the propensity of some environmental organizations to sue the Federal agencies as a way of generating taxpayer funded revenue, the ESA has been taken over by lawsuits, settlements, and judicial action.

Many of these lawsuits have recently been wrapped up into two so-called mega settlements between the Fish and Wildlife Service and the Center for Biological Diversity and Wild Earth Guardians. Recently, the Fish and Wildlife Service Director told Western Governors that the mega settlements have helped decrease the amount of deadline lawsuits by environmental groups. However, these self-imposed deadlines are creating legal dilemmas for the Service on decisions whether and when to list more than 750 new species, and to designate millions of acres of habitat over the next 4 years.

The Obama administration has also dramatically increased the designation of critical habitat, and has imposed actions that have been detrimental to economic growth. Here are some examples: BLM has acknowledged that its strict guidance with regard to the sage grouse has led to the deferral of more than 700 oil and gas leases in Montana, Utah, Wyoming, and my own State of Colorado; delay of more than 35 grazing permit renewals in Montana, Idaho, Nevada, Oregon, Utah, and Wyoming; more than seven electricity rights of way in Idaho and Wyoming; and denial of numerous coal bed natural gas and mining permits in Wyoming.

It should be possible to balance environmental protection and economic growth.

I look forward to the testimony from our witnesses and learning more about the efforts of the State of Montana and its local com-

munities to protect endangered species, while at the same protecting private property rights and ensuring economic growth.

Thank you, Mr. Chairman, and I yield back.

The CHAIRMAN. I thank the gentleman for his testimony, and I will recognize the gentlelady from Wyoming, Mrs. Lummis.

**STATEMENT OF THE HON. CYNTHIA M. LUMMIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING**

Mrs. LUMMIS. Well, thank you, Mr. Chairman. And I want to thank Congressman Steve Daines and the people of Montana for inviting us and warmly welcoming us for this hearing today. It is an honor and a pleasure to serve with Steve Daines on the House Natural Resources Committee, and to work with him on issues of mutual concern to our adjacent States. He does a wonderful job on behalf of the people of Montana. And, Steve, thank you for your courtesy and including us in this hearing today.

I also want to acknowledge my thanks to the Chairman of the House Natural Resources Committee, Doc Hastings, who not only chairs the committee, but co-chairs with me an effort to have a better Endangered Species Act, one that serves mankind and the flora and fauna that we so rely on and love as we try to make the Endangered Species Act work better.

During the first half of the 20th century, there were beliefs that we had bountiful, unlimited natural resources. And when we reached the middle of the 20th century, we began to see that there were limits to our natural resources. There are limits to clean air, clean water, to species, and to the environment that they rely on, and the habitat they need. But we responded with a command and control structure out of Washington, DC with rules drafted by people who have never been on the ground and never seen the species that they were affecting. We now have policy by litigation, policy that is made by courts and by lawyers, and not by policymakers or policy implementers, not by county commissioners, not people who use these resources.

I am very anxious to find a 21st century conservation strategy that will have robust conservation of species, and particularly their habitat, which is absolutely necessary to preserve those species, and at the same time, that allows for wise use of our lands by the people who rely on it for jobs and to have a robust economy. And I look very much forward to the testimony of our panel here in Montana.

Earlier today in Casper, Wyoming, we heard from some real innovators in public policy on the ground, boots on the ground conservation, not conservation litigation in the courtroom, not policies, but practices on the land that conserve species, conserve habitat, and make it possible for mankind to share these wonderful, bountiful resources once again through sound science, through landowner and locally driven practices. Our panel today will define for us additional innovations that we can take with us as we attempt to have a strong, robust, practice, common sense, science-based Endangered Species Act.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. I thank the gentlelady for her comments and opening statement.

And now I will recognize somebody that you are all familiar with, as we say, the gentleman from Montana, Mr. Daines.

**STATEMENT OF THE HON. STEVE DAINES, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF MONTANA**

Mr. DAINES. Thanks, Mr. Chairman, and thank you for agreeing to host this hearing here in Montana this afternoon, and I want to thank my colleagues for being here as well. We are surrounded by some great States here. I got North Dakota, Wyoming, Washington, and Colorado, so we are in good company here today. Thanks for coming up to Montana.

I also want to extend a special thanks to the Chancellor of MSU-Billings, Mr. Groseth. Rolf and Janie are friends of ours going back to longer than probably we want to admit, but it is good to have this facility. Thank you for allowing us to be here.

I am truly grateful that so many people have traveled from so far away to join me to address a very important issue affecting Montanans, and this is the abuse of the Endangered Species Act. This law is well intentioned. This is about trying to find reforms to the ESA going forward.

I just heard the other day from a rancher—when you think about the ESA, it was crafted in 1973, so the ESA is now 40 years old. He said, it is like a 40-year ranch pickup. It served a useful purpose, but it is in bad need of repair. I think that sums it up. It is well intentioned, but we need to bring some balance back to the ESA. And as we are going to see here today, it is harmful to many livelihoods here in Montana.

Now, like many in the audience here and most Montanans, we are avid outdoors people. We love the outdoors. That is what keeps us here. And when we built our company in Bozeman, our recruiting Web site was, "*iloveitthere.com*." We used to say "Work, where you also like to play." But there is a balance here. We want to be able to play in the outdoors as outdoors people, but we also need jobs. You cannot play in the outdoors unless you have got a job here to stay in Montana. I think we can strike a better balance in this regard.

For better or for worse, the wildlife and the environment that supports it are central to our way of life in Montana. As our witnesses are going to attest to later today, our land, living in concert with a very diverse wildlife we are fortunate to have here in Montana, allow us to grow commodities that feed the entire world, develop minerals that provide economic security for our State and for our jobs for our kids, and provide recreational opportunities that are truly second to none. All of us know if you are flying this time, that last leg, whether it is Salt Lake to Montana or Minneapolis or Denver, about half the folks getting on the planes right now are carrying a fly rod. In the fall, about half the folks are wearing camo. In the winter time, they are carrying ski boots. People want to come to Montana because of the incredible quality of life that we have.

However, in August we have seen firsthand the devastation from wildfires. So far this year, nearly 100,000 acres have burned in Montana so far. Nationwide the problem gets even bigger. I just got the update here this morning: 466,000 acres have burned during



this season. Wildfires threaten communities. In fact, as of yesterday, Montana had the largest fires in the Nation, in our State. The fires destroyed a forest where many of us love to recreate and where our unique wildlife lives, not to mention the threats to watersheds and so forth, as well as the air. I think the frustration for many of us is we have got bureaucrats back in Washington, DC that are not waking up and breathing the smoke-filled air that we breathe out here in Montana as a result of ravaging wildfires.

We once boasted in Montana a very strong timber industry. It helped maintain healthy forests, supported jobs, provided a steady revenue stream for our counties and our schools. Today, timber harvests are down 90 percent from when I was a kid. A U.S. Forest Service official recently acknowledged that the abundance of litigation has played a huge role in blocking responsible timber sales in Montana and other Region 1 States, including projects supported by collaborative efforts, consisting of timber as well as conservation leaders.

In fiscal year 2012, and so far this year, 40 percent of the projects, the timber projects, in Region 1 of the Forest Service have been appealed or litigated. Many of the lawsuits are fueled by the Endangered Species Act. The outgoing Deputy Interior Secretary, David Hayes, recently declared that critical habitat designations have been “fish in the barrel litigation for folks.” And unfortunately, it is the trial lawyers that are winning in this battle, and oftentimes Montanans are losing.

I am concerned that some of the fires existing on Federal Forest Service land could be prevented. We could reduce some of that risk if the Forest Service managed the forests the way they should.

The saw mill project near Cedar Lake is a perfect example. I was at that saw mill the day after the court order came down that stopped that project. It was a collaborative project that was appealed by a fringe extreme group, and it was stopped. This project amongst timber and conservation leaders was blocked based on the 9th Circuit Court. It was a decision that found the Forest Service had not fully analyzed its potential impact on the Canadian lynx and ESA protected species since 2000. The failure to recover this species is symptomatic of the ESA’s poor record.

Meanwhile, as of April 2012, fringe groups have won \$1.2 million from the taxpayer coffers. Now, tell me, how will burdensome paperwork for a non-controversial sale, whose merits are supported by conservationists and loggers alike, how is that harmful to a species? Was conservation of the species really the goal?

In northwest Montana, the Montanore Mining Project has been trying to get off the ground for 8 years. This project will create over 400 jobs in the Lincoln County with double digit unemployment. In my view, this project should have been started years ago. Today the project is still held up and is now becoming almost economically impossible for the company due to the existence of the grizzly bear habitat. Similarly, jobs at the Wild Bend Mining Company are at risk because of the ESA. These examples just scratch the surface of the ESA’s impact here in Montana.

Now, in conclusion, part of the focus today is the potential listing of the greater sage grouse. I would like to enter into the record

Governor Bullock's letter describing his commitment to finding a Montana solution to this potential listing.

The CHAIRMAN. It will be part of the record, without objection.

Mr. DAINES. And comments from the Montana Electric Cooperative Association addressing how a sage grouse listing would make power for their customers more expensive.

[The letter submitted for the record by Mr. Daines follow:]

LETTER SUBMITTED FOR THE RECORD BY THE HONORABLE STEVE BULLOCK,  
GOVERNOR

STATE OF MONTANA,  
HELENA, MT, SEPTEMBER 3, 2013.

*U.S. House of Representatives,  
Committee on Natural Resources.*

Re: Oversight Field Hearing in Billings, Montana, September 4, 2013

STATEMENT OF MONTANA GOVERNOR STEVE BULLOCK

I welcome members of the U.S. House Natural Resources Committee to the State of Montana. Thank you for coming to our State to learn about the State's efforts to protect the Greater Sage-grouse.

We Montanans work best when we work together to solve problems. As westerners, we've always had to rely on each other, regardless of our political views. That's especially the case now with the serious gridlock and partisanship that continues to plague Washington, DC.

Shortly after taking the oath of office, Montanans of many different stripes asked me to take action—from energy industry executives to conservation leaders and local government officials—all were concerned that Montana was not doing enough to address protections for the sage grouse.

Protecting this species is about protecting jobs and our economy, and State leadership over our wildlife. We can protect this iconic bird while promoting continued economic development and the protection of private property rights.

This past February, I established the Greater Sage-grouse Habitat Conservation Advisory Council, "to gather information, furnish advice, and provide . . . recommendations on policies and actions for a state-wide strategy" to protect the sage grouse and keep its management in State hands.

I put a broad cross-section of Montanans on the Council—citizens representing such interests as energy, mining, transmission, conservation, sportsmen and women, legislature, agriculture and ranching, and local and tribal governments. I made the Council's work a clear priority of the Director of Fish, Wildlife and Parks.

The Advisory Council has been following a very aggressive meeting schedule to craft a Montana solution. The process has been in-depth and transparent, and will lead to a draft strategy recommendation that will undergo extensive public review and comment.

There has been considerable support and involvement from industry, private citizens, and governmental and non-governmental organizations. The Council has received input from leading scientists, specialists, citizen experts such as ranchers working in sage grouse country, and other western States with valuable experience.

While you are conducting your hearing, the Council will be in a previously scheduled meeting to continue its work, its 7th meeting since May. It is regrettable that the Council members will not be able to attend in person to share with you the fruits of their work. Information regarding the Council's work can be found at: <http://fwp.mt.gov/fishAndWildlife/management/sageGrouse/habitatConservation/>.

The sage-grouse is currently State managed and not under the authority of the Federal Government. It is my goal to keep management of the bird under State leadership, despite the litigation brought against the Federal Government seeking to end State control. The U.S. Fish and Wildlife Service have asked Montana to share its updated management strategy for sage grouse, and I plan on submitting our Montana-led solution early next year.

Here on the ground in Montana, the solutions will come from Montanans, who will roll up their sleeves, set aside political differences and posturing, and work to find creative ways to protect our economy and the sage grouse for our future generations.

Again, thank you for your interest in this important issue and welcome to the last, best place.  
Sincerely.

STEVE BULLOCK,  
*Governor.*

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Mr. DAINES. I, too, am deeply concerned that sage grouse could become the Canada lynx or grizzly bear of southern, central, and eastern Montana. We want to keep the ESA from being used as a tool to obstruct positive species and resource management and allow the people, not the bureaucrats in Washington or judges in the Ninth Circuit, to determine how our environment and our resource economies can flourish together.

If we continue to allow fringe groups and liberal judges to dictate our policies, Montanans will lose. We need a good dose of sound science and less dose of political science.

With that, I will yield back to the Chairman.

The CHAIRMAN. I thank the gentleman.

And now, I will recognize the gentleman from North Dakota, Mr. Cramer.

**STATEMENT OF THE HON. KEVIN CRAMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH DAKOTA**

Mr. CRAMER. Thank you, Chairman Hastings. First of all, thank you for answering favorably to Representative Daines' and my letter requesting this important hearing in this beautiful place. And thank you, Steve, for your hospitality. My wife, Chris, and I have grown to very much appreciate and love Steve and Cindy Daines, and appreciate your service to our country.

And thank you to the citizens of Billings because my wife and daughters have spent a lot of money at the Rim Rock Mall on our way to Red Lodge on a regular basis.

[Laughter.]

Mr. CRAMER. We love this place, and so, it is great to be with you. And this is an important issue.

From time to time, I feel sorry for myself when I consider how far it is between constituents and the big congressional district known as North Dakota, and then I think about how far Steve Daines has to drive to do his job, and I feel better about myself. But I am reminded when we do that how special the West is, how very special the West is, and how special it is has remained, not because bureaucrats in Washington, DC have been looking over it so carefully, but because the people who live here care so much for it. In fact, you would be hard pressed to find anybody in Washington that loves the West more than the people who have chosen to make it their home.

And so much of what we face out here in terms of challenges are really challenges that come from Washington, DC. They come at us in droves from Washington. So I appreciate the leadership of this committee and my opportunity to serve with these good people on the Natural Resources Committee, who have a clear understanding, and who know that from time to time during a recess, it is good to get some common sense from where common sense is most abundant, in this very same West.

In North Dakota, prior to being elected to Congress, I spent nearly 10 years as a regulator in the energy world. I was a State Public Service Commissioner, and carrying the portfolios for refineries and pipelines, coal mining, power generation, and siting transmission lines, and all of the things that add to our quality of life and grow our economy. And I was quite shocked one day when some witness at one of our hearings raised the issue of sage grouse as a problem for a particular route.

And I would just say, as frightening as it is to think of bureaucrats in Washington, unelected, setting public policy, the thing that is far more frightening than that is litigation setting public policy. And I used to be critical of Congress for giving up so much of its authority by giving so much of it away. Now, we are in a new era, and we need to revisit those earlier decisions and get our hands wrapped around this litigious, bureaucratic mess really that brings us here.

You have a good Representative here, and you have a good team here to take it up. But the real experts are waiting to testify, and I will yield the remainder of my time so that we can hear from them, Mr. Chairman. Thank you.

The CHAIRMAN. I thank the gentleman for his testimony. I thank all of my colleagues for their testimony. And we will begin the panel with your testimony.

Now, let me explain that you have all been asked to submit written testimony. And virtually in all of your written testimonies, the ones that I read, I know far exceed 5 minutes. Nothing wrong with that. That makes it part of the public record. What we would like to ask you to do, and just in essence of time so we can have some interaction with questions, is keep your oral arguments within 5 minutes.

Now, I am pretty generous. Did we get that hook that we asked for?

[Laughter.]

The CHAIRMAN. Now, I am generous, and so what you have in front of you is the timing lights. It is very similar to a traffic light. You can look at it that way. But when the green light comes on, it means that you have 5 minutes, and you are doing wonderfully well. When the yellow light comes on, that means you are within a minute, or like if you are driving a car, you speed up. That may be an idea to speed up. But when the red light comes on, that means that your 5 minutes are up, and I would ask you to try to wrap up your remarks.

Obviously we want to hear—and I do say this. I know it is extremely difficult in 5 minutes to put together all of what you are trying to communicate. Believe me, we recognize that. That is why we have your full statement that you submitted, so that is part of the record.

And this will be the only oral part of this other than the question and answer from members of this committee. But if any of you would like to submit any statements on anything that is said one way or the other—open country here—you can visit our committee Web site, which is [www.naturalresources.house.gov](http://www.naturalresources.house.gov), and press “contact.” Or just go to Google and say House Natural Resources. Somebody will get you there.

OK. With that, thank you all, panelists, for being here, and we will start on my left side with Ms. Lesley Robinson, who is a Commissioner from Phillips County, Montana. Ms. Robinson, you are recognized for 5 minutes.

**STATEMENT OF LESLEY ROBINSON, COUNTY COMMISSIONER,  
PHILLIPS COUNTY, MALTA, MONTANA**

Ms. ROBINSON. Chairman Hastings and members of the committee, I appreciate the opportunity to testify. I am Lesley Robinson, Chairman of the Montana Association of Counties Public Lands Committee, a Commissioner from Phillips County, and a member of the Montana Stockgrowers Association.

Phillips County spans 5,213 square miles. We have approximately 4,000 people and 56,000 cattle. Ninety-eight percent of Phillips County's 3.2 million acres is classified as agriculture land. Approximately 33 percent is administered by the BLM, and 49 percent is private land.

Phillips County's economy is dependent on agriculture and natural gas production. The 2012 Montana ag statistics State cash sales of agricultural commodities for Phillips County was \$80 million. These raw commodities are further processed and transported to other regions of the United States and world, generating \$434 million in commerce. Based on annual consumption levels, Phillips County produces enough beef to feed 343,350 people and enough wheat to feed 1.6 million people. Gas production results in 4 of the top 15 taxpayers in Phillips County, providing 37 full-time jobs.

I am a fourth generation Phillips County rancher. Our ranch sits right in the middle of high quality sage grouse habitat as identified by the Montana Fish, Wildlife, and Parks, and the BLM. This area covers a major portion of Phillips and Valley County. Any action will have a significant economic impact on our rural economies of this area and the State.

BLM has just released their draft Resource Management Plan, and 969 allotments in our planning area have been assessed, and 93 are meeting rangeland health standards. While the ranching community is always striving to keep improving, this is proof that our industry has been successful in working with the BLM to meet the objectives.

I would like to share with the committee some research that was conducted in south Phillips County where I live. The research title is "Landscape-Scale Factors Affecting Population Dynamics of Greater Sage Grouse." It was conducted from 2001 to 2004 by Brendan James Moynahan, Ph.D. candidate with The University of Montana.

Moynahan radio tagged 243 hens in south Phillips County. In his first year of the study, most nest failures, 94 percent, were attributed to depredation, and most of the nest depredations, 63 percent, were attributed to avian predators. He noted that even in areas of expansive, high-quality habitat such as south Phillips County, winters may be so severe as to have a clear and substantial populations-level impacts. However, there is no published research data that indicates livestock grazing has any impact on sage grouse populations. The fact that there is a hunting season on sage grouse indicates that there is a healthy population.

Additionally, Montana FWP is capturing live birds in south Phillips County and transporting them to Canada to improve their population. The agency believes that the sage grouse population is stable over the last 30 years.

If a listing of sage grouse under the ESA were to occur, it would have a dramatic effect on our community and State. I believe one of the first actions to be implemented would be a reduction or elimination of grazing in sage grouse areas. The socioeconomic impacts of this type of action would be substantial, and the likely reductions in livestock grazing on Federal lands could have great impacts on local economies like ours that are dependent on livestock production.

TransCanada has also proposed the Keystone XL pipeline. The route would enter the United States in Phillips County and pass through five other counties. We have seen case after case of projects such as this being derailed because of the Endangered Species listing and the habitat associated with those species. If these projects fail to materialize, so do the good paying jobs and essential tax revenue to the county.

The active management of public lands is essential to the economy of our community. It is my experience that species conservation will happen only at the ground level. No one is better equipped or motivated to prevent the ESA listings than a rancher, who own and/or operate or manage the land that is most likely to be the prime species habitat. If you give ranchers and their local governments an opportunity, they will develop the voluntary proactive measures they can to implement that benefit the species in question.

I firmly believe that species conservation is a community-driven effort that strives to work with individuals, groups, and agencies to achieve a goal. Addressing species, such as sage grouse, needs to be a grassroots effort, not a top down approach. Allowing multiple use of Federal lands is a critical step in ensuring a secure food and fuel supply for the American people. It is imperative that we provide your committee and the entire Congress the input that is needed to modernize the ESA process to meet the future needs of our communities, State, and Nation.

Thank you for allowing me to testify.

[The prepared statement of Ms. Robinson follows:]

PREPARED STATEMENT OF LESLEY ROBINSON, COUNTY COMMISSIONER, PHILLIPS COUNTY, MALTA, MONTANA

Chairman Hastings and members of the committee. I appreciate the opportunity to testify on behalf of Phillips County at the House Natural Resources Committee Oversight Field Hearing.

I am Lesley Robinson, Chairman of the Montana Association of Counties Public Lands Committee, a Commissioner from Phillips County and a member of the Montana Stockgrowers Association.

Phillips County spans 5,213 square miles. We have approximately 4,000 people and 56,000 cattle in our county. Ninety-eight percent of Phillips County's 3.2 million acres is classified as agriculture land. Approximately 33 percent is managed by the BLM and 49 percent is private land.

Phillips County's economy is dependent on Agriculture and Natural Gas production. The 2012 Montana Agricultural Statistics State cash sales of agricultural commodities for Phillips County was \$80 million. These raw agricultural commodities are further processed and transported to other regions of the United States and world, generating \$434 million in commerce. Based on annual consumption levels

Phillips County produces enough beef to feed 343,350 people and enough wheat to feed 1.6 million people.

I am a fourth generation Phillips County rancher. Our ranch sits in the middle of "core area 2" on the Montana Fish, Wildlife and Parks sage grouse designation and the Bureau of Land Management "Greater Sage-Grouse Protection Priority Area." This area covers a major portion of Phillips and Valley County, including 1.6 million acres total. With 54 percent of this acreage, under BLM management and 27 percent being private, any potential listing of sage grouse under the Endangered Species Act, Any action will have a significant economic impact on rural economies in this area and the State.

Currently the BLM has just released the HiLine Draft Resource Management Plan (RMP). The HiLine District administers 763 permits, permitting approximately 386,600 Animal Unit Months (AUMs) of livestock forage. All 969 allotments in the planning area have been assessed for rangeland health standards. Out of those allotments, 907 allotments are meeting rangeland health standards. This is a 93 percent success rate for grazing allotments in this planning area. While the ranching community is always striving to keep improving, this is proof that our industry has been successful in working with the BLM to meet the objectives.

I would like to share with the committee some research that was conducted in south Phillips County where I live. The research title is Landscape-Scale Factors Affecting Population Dynamics of Greater Sage-Grouse (*Centrocercus urophasianus*) in north-central Montana, it was conducted from 2001–2004 by Brendan James Moynahan, Ph.D. Candidate with The University of Montana.

Moynahan radio-tagged 243 hens during a 3-year study of sage-grouse in south Phillips County. In his first year of the study, 2001 most nest failures (94 percent) were attributed to depredation, and most nest depredations (63 percent) were attributed to avian predators. He suspected that California gulls were the primary predators (Moynahan 2004: 29)

Of the successful nests of the marked hens in 2001, only one chick survived to 30 days (Moynahan 2004: 69)

Moynahan noted that even in "areas of expansive, high-quality habitat such as south Phillips County, winters may be so severe as to have clear and substantial populations-level impacts" (Moynahan 2004: 128). Additionally he suggested that the effects of West Nile virus were pronounced (Moynahan 2004: 129).

The fact that there is a hunting season on sage-grouse administered by the Montana Fish, Wildlife, and Parks, indicates a healthy population. Additionally, the State agency is capturing live birds in south Phillips County and transporting them to Canada to improve their population. Montana Fish, Wildlife and Parks believes the sage-grouse population is stable over the last 30 years. There is no published research data that indicates livestock grazing has any impact on sage-grouse populations.

If a listing of sage grouse under the ESA were to occur, it would have a dramatic effect on our community and State. I believe one of the first actions to be implemented would be a reduction or elimination of grazing in sage grouse areas. The socioeconomic impacts of this type of action would be substantial. The likely reductions in livestock grazing on Federal lands could have great impacts on local economies like ours that are dependent on livestock production.

It is my experience that species conservation will happen only at the ground level. No one is better equipped or motivated to prevent ESA listings than ranchers, who own and/or manage the land that is most likely to be prime species habitat. If you give ranchers and their local governments an opportunity, they will develop the voluntary, proactive measures, they can implement that benefit the species in question. This approach meets the needs of the community, while also meeting the needs of wildlife.

A Public Opinion Strategies poll in Montana also supports the ideals of having a strong economy and a healthy environment. Seventy-two percent of those surveyed, said they supported the statement that "We can protect land and water and have a strong economy with good jobs for Americans at the same time, without having to choose one over the other." The survey also pointed out that there was strong support for allowing Montana to better manage wildlife to avoid Federal Government interference. Montanan's know what's best for Montana.

In addition to the agricultural economy of our county, 4 of the top 15 taxpayers in Phillips County are gas companies. Direct employment from gas production in Phillips County has resulted in 37 full time jobs. TransCanada has also proposed the Keystone XL pipeline. The route would enter Montana in Phillips County and pass through Valley, McCone, Dawson, Prairie and Fallon Counties. We have seen case after case of projects such as this being derailed because of ESA listings and the habitat associated with those species. If these projects fail to materialize, so do

the good paying jobs and essential tax revenue to the county. The active management of public lands is essential to the economy of our community. Allowing multiple use of Federal lands, is a critical step in ensuring a secure food and fuel supply for the American people.

I firmly believe that species conservation is a community-driven effort that strives to work with individuals, groups and agencies to achieve a goal. It is essential that addressing species, such as sage grouse, is a grassroots effort, not a top down approach. It is imperative that we provide your committee and the entire Congress, the input that is needed to modernize the ESA process to meet the future needs of our communities, State and Nation.

The CHAIRMAN. And that is exactly why we are here to hear that testimony.

Now, I would like to recognize Mr. Matt Knox, who is representing the Montana Farm Bureau. And Mr. Knox is from Winifred, Montana. You are recognized for 5 minutes.

**STATEMENT OF MATT KNOX, MONTANA FARM BUREAU,  
WINIFRED, MONTANA**

Mr. KNOX. Chairman Hastings, Congressman Daines, and members of this committee, I thank you for the opportunity to testify today on this important issue.

I ranch in central Montana in the Missouri Breaks with my wife, Karla, and daughters, Sally and Sarah. Currently, I am serving on the Board of Directors of the Fergus County Farm Bureau, and I also represent the Missouri River Stewards, an organization dedicated to protecting ranching in the Missouri river breaks. I am testifying today on behalf of the Montana Farm Bureau.

We believe Montana has a viable and stable sage grouse population. As such, any efforts at conservation should be aimed at continuation of current efforts. The bird numbers vary due to many factors. There are very real threats to the survival of sage grouse, but they should not be confused with misdirected conservation measures. Amongst these misdirected measures are several that are listed in the BLM's national strategy to protect sage grouse. They were developed by the National Technical Team, whose main interest it seems is to restrict or eliminate land uses that, in fact, pose little or no threat to grouse.

Some of the measures are predicated on the assumption that livestock grazing is associated with sage grouse population loss. This ignores the parallel decline over the past half century of both livestock numbers and sage grouse on public lands. In 1953, there were approximately 18 million AUMs on public lands in the West. By 2000, that number was around 10 million. If grazing were the problem, sage grouse should be flourishing. Sage grouse management and grazing management share a common objective of healthy native rangeland, which is important to both livestock and sage grouse.

Another misdirected conservation measure is the management of wildfire by BLM. We believe the national strategy suggests managing fire by minimum impact suppression tactics. Rangeland fire, we believe, in sage grouse habitat should be attacked immediately and aggressively.

Predation continues to be ignored by the U.S. Fish and Wildlife Service as a factor in sage grouse decline. Their response to questions on predation continues to be that it may be a rare localized



issue, but adequate habitat is the real problem. One example is a very aggressive nest predator, the raven, whose population in the West has grown by over 1,000 percent since 1900. And I can certainly bear that out where we live. Predators are a factor, and any effort to conserve the species needs to address the issue.

At the request of the livestock and oil and gas industries, Governor Bullock appointed a Sage Grouse Advisory Committee to develop a management plan for sage grouse in Montana. The plan must pass muster with the U.S. Fish and Wildlife Service to keep the bird from being listed. As mentioned above, there is plenty of data proving that grazing and sage grouse are compatible. Therefore, we suggest that Montana follow the Wyoming example of exempting traditional agricultural practices. The livestock and oil and gas industries have put a lot of time in this. We would hate to see all this time wasted.

This brings us to the crux of the problem of the act itself. It is not working very well. One of the major factors we all know about is cost. A couple of examples that were compiled by the Political Economy Research Center in Bozeman Montana: the Subcommittee on Forest and Forest Health reported that 130,000 jobs were lost and more than 900 sawmills, paper, and pulp mills were closed because of the spotted owl. And we all remember recently what went on with the farmers in the Klamath Basin. Those crops were valued at \$53 million.

The ESA, or the threat of it, can also cause what I would call perverse incentives. When the draft version of the final management plan for the Missouri Breaks Monument came out, some of the leks on deeded land were identified in their maps. Language was included, enabling BLM to manage adjacent BLM lands accordingly. In other words, we were being punished for being good managers apparently.

We strongly contested this provision, but without success. Since that time, there has been an understandable and justifiable reluctance on the part of our local ranchers to cooperate with lek inventories.

In closing, farmers and ranchers are very frustrated with the ESA process. We need to see honest economic analysis. We also would prefer a solution built around incentives and landowner and community involvement. Thank you.

[The prepared statement of Mr. Knox follows:]

PREPARED STATEMENT OF MATT KNOX, BOARD OF DIRECTORS, FERGUS COUNTY FARM BUREAU, REPRESENTING MONTANA FARM BUREAU FEDERATION

Chairman Hastings, Congressman Daines and members of the Natural Resources Committee.

My name is Matt Knox, and I want to thank you for the opportunity to testify today on *"State and Local Efforts to Protect Species, Jobs, Property, and Multiple Use Amidst a New War on the West"*.

I ranch in north central Montana in the Missouri Breaks with my wife Karla and daughters Sally and Sarah. Currently I serve on the Board of Directors of Fergus County Farm Bureau and also represent the Missouri River Stewards, an organization dedicated to protecting ranching in the Missouri river breaks.

Today I am testifying on behalf of the Montana Farm Bureau.

I would like to talk specifically about Sage Grouse, the real threats to the species, misdirected conservation efforts by the BLM, Montana's developing sage grouse management plan and end with a few comments on the Endangered Species Act in general.

Montana has a viable and stable sage grouse population. As such any efforts at conservation should be aimed at continuation of current efforts. Bird numbers tend to vary due to weather patterns, predation, disease, wildfire and sage brush conversion. These are very real threats to the survival of sage grouse and should not be confused with misdirected conservation measures. Among these misdirected measures are several that are listed in the BLM's national strategy to protect sage grouse. They were developed by the National Technical Team (NTT) whose main interest it seems is to restrict or eliminate land uses that in fact pose little or no threat to grouse. Some of the measures are predicated on the assumption that livestock grazing is associated with sage grouse population loss. This ignores the parallel decline over the past half century of both livestock numbers and sage grouse on public lands. In 1953, there was approximately 18 million animal unit months (AUMs) on BLM land in the West, by 2000 that number was around 10 million AUMs. If grazing were the problem, sage grouse should be flourishing. Sage grouse management and grazing management share a common objective of healthy native rangeland vegetation, which is as important to range livestock production as it is to sage grouse. Retiring grazing privileges as suggested by the BLM is based on political antagonism far more than real biology. It is amazing to our members that grazing by cattle is a threat but overgrazing by wild horses or wildlife has no effect in the eyes of the BLM.

Another misdirected conservation measure is the management of wildfire by the BLM. The national strategy suggests managing fire by Minimum Impact Suppression Tactics (MIST). It doesn't take a long memory to recall the devastation to sage grouse habitat during the 2012 fire season. Rangeland fire in sage grouse habitat should be attacked immediately and aggressively.

Predation continues to be ignored by the U.S. Fish and Wildlife Service as a factor in sage grouse decline. Their response to questions on predation continues to be; it may be a rare localized issue but adequate habitat is the real problem. In the early 1900s sage grouse numbers began to grow as ranchers and farmers controlled coyotes, skunks, crows and ravens. The trend continued into the 1960s when efforts to control predators were curtailed through government regulation. An example is a very aggressive nest predator, the raven whose population in the West has grown by over 1,000 percent since 1900. Predators are a factor and any effort to conserve the species needs to address the issue.

At the request of the livestock and oil and gas industry, Governor Bullock appointed a sage grouse advisory committee to develop a management plan for sage grouse in Montana. The plan must pass muster with the U.S. Fish and Wildlife Service thus keeping the bird from being listed. As mentioned above there is abundant data proving that grazing and sage grouse are very compatible uses. That applies not only to grazing, but to water development, irrigation and other developments within reasonable distances from active leks. Therefore we suggest that Montana follow the Wyoming example of exempting traditional agricultural practices. The livestock and oil and gas industries have put a great deal of time and effort in this effort as well as hundreds of hours of State legislator and agency employee hours. These hours will have been wasted and the reputation of the entire ESA tarnished even further if, as Director Dan Ashe stated at a recent Farm Bureau gathering in Washington, DC that he was 90 percent certain that sage grouse will be listed no matter what the States develop as management strategies.

This brings us to the crux of the problem, the Endangered Species Act itself. It is not working very well. In fact since its passage over 13,000 species of plants and animals have been listed. Depending on whose numbers you use, anywhere between 7-20 species have been removed from the list. Of those removed, most had little or nothing to do with the act but dealt with species already extinct or recovered by some other means. This leaves the ESA with a success percentage of around .06 percent. Cost is another factor of the equation. Some examples of costs compiled by the Political Economy Research Center (PERC) in Bozeman Montana are:

- Delay of a \$55 million high school in California while waiting for ESA determination on fairy shrimp. Cost \$1 million.
- The Subcommittee on Forest and Forest Health reported that 130,000 jobs were lost and more than 900 sawmills, paper and pulp mills were closed because of the spotted owl.
- Farmers in the Klamath Basin lost crops valued at \$53 million because irrigation water was shut off in 2001 to protect two fish species.
- \$100 million spent on Prebles Jumping Mouse which wasn't even a unique species.

The definition of critical habitat has wandered far afield. The current definition now fits better for those who would seek wide spread land use control than for those

who would preserve a species. "Critical habitat" is not defined as land on which the species currently lives, but as any area that has characteristics essential to the survival of the species. A piece of property may be designated "critical habitat" if a species might have lived there or could possibly live there some time in the future.

Endangered designations lack verifiable peer reviewed scientific evidence. According to Dr. J. Gordon Edwards, San Jose State University in "The Handbook of Environmental Science Health and Technology", scientists around the world have recognized that biological species must be reproductively isolated and genetically distinctive natural populations. This scientific categorization of species bears no resemblance to the political use of the word in the ESA. In fact Edwards claims detailed records reveal 40 percent of species listed on the ESA to be only sub-species or distinct populations. Among these is the Florida panther, eastern timber wolf, Columbian white tail deer and the infamous northern spotted owl.

In closing, Montana Farmers and Ranchers are extremely frustrated with the Endangered Species Act. It is like a treadmill to landowners and producers. We spend an inordinate amount of time and effort in order to keep species from being listed, only to have them listed anyway. Once listed, delisting goals are moving targets. When delisting targets are reached delisting is further delayed by court cases. Habitat control takes precedence over species conservation. Conservation of one species leads to degradation of another. The sage grouse is on center stage at this time, before that it was the wolf, cutthroat trout and grizzly bears to name a few. When we start playing god to one species there is no place to stop until the Federal Government controls the entire West.

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The CHAIRMAN. Thank you very much, Mr. Knox, for your testimony.

Next, I will recognize Mr. Dave Galt from the Montana Petroleum Association, which is based in Helena. And you are recognized for 5 minutes.

**STATEMENT OF DAVE A. GALT, EXECUTIVE DIRECTOR,  
MONTANA PETROLEUM ASSOCIATION, HELENA, MONTANA**

Mr. GALT. Thank you, Mr. Chairman, and welcome to Montana. Thank you for invitation to speak and for the huge effort on your part to hold a series of hearings out West to learn more about the Endangered Species Act.

Chairman Hastings, members of the committee, for the record, I am Dave Galt, Executive Director of the Montana Petroleum Association. Our members include companies, and members, and individuals involved in the exploration, drilling, production, transporting, and refining of oil and natural gas.

The Montana State University, Billings, has done extensive analysis of the economic impact of the oil and gas industry in Montana. Here are a few facts from their 2012 update published in the Treasure State Journal. Direct and indirect jobs supported by the industry exceed 20,000. Total economic output from the oil and gas industry in Montana is in excess of \$10 billion dollars. Firms, investors, and employees of Montana's oil and gas industry paid an estimated \$440 million in State and local taxes. A 5 percent industry expansion would result in over 1,000 new jobs in Montana.

I have attached three charts to help you visualize oil and gas production in or State. The map shows oil producing areas in green, gas in red, and sage grouse core areas in purple. The black dots—the little, itty-bitty black dots—represent wells drilled in Montana since 1915. While the purple areas represent sage grouse core areas, when you include the entire grouse habitat, it covers most of the eastern half of Montana. The other two slides illustrate oil and gas production in Montana by county just to give you an

idea of where it is coming from in Montana. And my point is that it is across the State, and not just in the Bakken.

Studies relied upon by the NTT and the BLM in their NTT were significantly and scientifically flawed. A primary source of information used by the NTT was reviewed by the Center of Environmental Science, Accuracy, and Reliability, which found significant mischaracterization of previous research; substantial errors and omissions; lack of independent authorship and peer reviews; three of the authors on the NTT were also the authors, researchers, and editors on three of the most cited sources, methodological bias; invalid assumptions and analysis; and inadequate data.

The NTT also insisted repeatedly on citing Holloran's study in 2005, dissertation as gospel, even though it failed to acknowledge that countless stipulations and mitigation measures utilized by the oil and gas industry throughout sage grouse habitat. The focus of the study was limited to an unmitigated control area which was used as a basis for comparison to areas where mitigation was being employed.

In Montana, no site specific sage grouse data relating to the actual study areas were used by the BLM in their resource management plan revisions. Therefore, MPA has asked the BLM to rewrite the planning document.

The Interior's reliance on the NTT report will cause new oil and gas leasing, exploration, and development in Montana to be essentially terminated in sage grouse areas and sage grouse habitat. The BLM has proposed the use of no surface occupancy stipulation on millions of acres of public lands, as well as private surface and Federal minerals ostensibly to protect sage grouse and its habitat. BLM makes these areas off limits to new rights-of-way, and even is considering forcing the relocation of existing rights-of-way.

In conclusion, we support efforts to avoid listing of the greater sage grouse as a threatened or endangered species, but we object that the Department of the Interior believes that the habitation destruction is the single most important factor impacting the sage grouse, particularly that from oil and gas development. Weather and predation are extremely important factors and have been essentially ignored by the agencies. Nevertheless, the greater sage grouse will continue to survive to the best of its ability, while the economy of public lands and the States will suffer draconian declines due to unjustified limits on multiple use and revenue generating activities.

Mr. Chairman, I have got an extensive written testimony. There is a lot of information in there. There are studies that we have referred to. We did not provide them. We would be glad to if the committee so desires. Thank you.

[The prepared statement of Mr. Galt follows:]

PREPARED STATEMENT OF DAVID A. GALT, EXECUTIVE DIRECTOR, MONTANA  
PETROLEUM ASSOCIATION, HELENA, MONTANA

Welcome to Montana. Thank you for the time and the huge effort to hold a series of meetings in the West to learn more about sage grouse and other potential endangered species.

Chairman Hastings, members of the committee; I am Dave Galt, Executive Director of the Montana Petroleum Association (MPA). MPA's members include companies involved in the exploration, drilling production, transporting and refining of oil

and natural gas. Montana has a long history of oil and gas production. Our first commercial was drilled in Elk Basin in 1915.

Montana State University-Billings has done extensive analysis of the economic impact of the oil and gas industry in Montana. Here are a few facts from their 2012 update published in the *Treasure State Journal*:

- Direct and indirect jobs supported by the industry exceed 20,000 jobs.
- Total economic output from the oil and gas industry in Montana is in excess of \$10 billion.
- Firms, investors, and employees of Montana's oil and gas industry paid an estimated \$440 million in State and local taxes in 2011—Tax revenue that supports education, protective services, roads and a host of services.

Montana was one of only a few States that maintained a positive budget balance through the recent great recession. Montana is in the black because of the active petroleum industry. New wells, expanding refinery capacity and new pipeline systems all contribute to a robust economy in Montana. A 5 percent industry expansion would result in over 1,000 new jobs in Montana.

I have attached three charts to help you visualize oil and gas production in Montana. The map shows oil producing areas in green, gas in red and sage grouse core areas in purple. The black dots represent wells drilled in Montana since 1915. While the purple areas represent sage grouse core areas; when you include the rest of the sage habitat, it covers most of the eastern half of Montana except the extreme north east corner. Sage grouse management proposed by the BLM with the blessing of the USFWS is going to have a debilitating impact on Montana's oil and gas production. The other two slides illustrate oil and gas production by county in Montana. The point is that there is production and potential across Montana, not just in the "Bakken."

The potential listing of sage grouse and the Sprague's pipit pose huge problems not just for the oil and gas industry in Montana, but for all multiple-use activities, including mining and grazing. We are seeing States in the West develop plans to provide conservation measures for sage grouse that place huge tracts of land off limits to nearly all revenue-generating activities. The determination of the need to list the sage grouse has been a topic of litigation and debate for the last decade. Law suits by environmental groups have led to a "closed door" settlement by the Federal Government to decide the status of many species, the sage grouse being one, petitioned for listing as threatened or endangered species. The U.S. Fish and Wildlife Service must decide by July of 2015 if the sage grouse is endangered. In the meantime; Western States, led by Wyoming, are developing conservation plans for the grouse. At the same time the Bureau of Land Management, BLM is rushing to release revised resource plans, or amend existing plans, which contain draconian stipulations for resource development. The ink wasn't dry on Montana's 2005 conservation plan, when academics and environmental groups said the restrictions in that plan were inadequate. Wyoming took the lead to identify core areas and protect them with very strict stipulations. And now the BLM's National Technical Team (NTT) on sage grouse recommends even more stringent stipulations, despite the fact that none of the existing stipulations have any science behind them to suggest they are inadequate.

Of particular concern is that the Department of the Interior, particularly the U.S. Fish and Wildlife Service, U.S. Geological Survey and Bureau of Land Management, have failed to utilize any type of systematic cataloging and quantitative evaluation to determine the type, extent and effectiveness of mitigation measures that have been employed by the oil and gas industry in areas where it operates. That the agencies have very little useful and site-specific data upon which to base its land management decisions, particularly with respect to oil and gas exploration and development activities, is egregious when one views the protections measure proposed by BLM in its RMP revisions and amendments. DOI is relying upon flawed data perpetuated by its National Technical Team on Sage Grouse which is highly problematic.

Studies relied upon by the NTT were significantly and scientifically flawed. Just a few of these problems are:

The Cooper Ornithological Society's Monograph: *Studies in Avian Biology* (monograph), used as a primary source of information by the NTT, was reviewed by the

Center for Environmental Science, Accuracy and Reliability (CESAR) in a paper<sup>1</sup> which found that the monograph relied upon:

- Significant mischaracterization of previous research;
- Substantial errors and omissions;
- Lack of independent authorship and peer review (3 of the authors of the NTT are also the authors, researchers, and editors on 3 of the most cited sources in the NTT);
- Methodological bias;
- A lack of reproducibility;
- Invalid assumptions and analysis; and
- Inadequate data.

The NTT also insisted upon repeatedly citing Holloran's 2005 dissertation<sup>2</sup> as gospel despite the fact that it failed to acknowledge the countless stipulations and mitigation measures utilized by the oil and gas industry throughout sage grouse habitat. It is critically important to recognize that the focus of this study was limited to an unmitigated control area which was to be used as a basis for comparison to areas where mitigation was being employed. Not surprisingly, Holloran's predictions of catastrophic population decline have been clearly refuted by the data. Specifically, he predicted population declines of between negative 8.7 percent to negative 24.4 percent annually in Pinedale (page 82, Table 2). However, those doom and gloom population predictions have simply failed to come true. Instead sage grouse populations in these areas have been continually increasing, and are well above state-wide averages.

Analyses of lek count data by the State of Wyoming show that lek-attendance trends have been increasing since 1990 and their densities are the highest in the State. In fact, a separate analysis by Renee Taylor of Taylor Environmental Inc. has shown that there is no statistically significant difference between the average number of male sage grouse in areas affected by oil and gas in both the Pinedale and control areas. If Holloran's predictions were true, there would only be a handful of birds left around Pinedale. Clearly, Holloran and his approach were wrong.

A report<sup>3</sup> prepared using Wyoming Game and Fish sage-grouse data clearly demonstrates the significance of precipitation levels with respect to sage-grouse population arcs. While weather and precipitation levels cannot be controlled by the Federal government, they are clearly tied to sage-grouse survival and population and must be acknowledged. Also, numerous published reports and papers have identified the significant role predation has on the survival of the sage-grouse which have not been taken into full account by the Department of Interior so that reasonable and effective measures to reduce predation can be formulated and adopted.

When BLM prepared its RMP revisions for Montana, no site-specific sage-grouse data relating to the actual study areas was used. Rather, BLM relied upon information based on studies of Sage Grouse Management Zone 1 (MZ1) as described in the NTT Report, which includes northeastern Wyoming and far western North and South Dakota. In so doing, BLM failed to ensure the accuracy needed upon which to base informed land use decisions. Although analysis of MZ1 would be appropriate as a study area for analysis of cumulative impacts to sage-grouse nation-wide, potential direct and indirect impacts to sage-grouse and sage-grouse habitat resulting from implementation of the RMP must address only those conditions and potential direct and indirect impacts specific to the specific planning areas. Consequently, MPA has asked for a redraft of all these RMP Revisions in which sage-grouse data directly applicable to the planning areas in Montana would be utilized.

It is also important to note that the NTT Report is not even supported by the Western Association of Fish and Wildlife Agencies (WAFWA) as DOI's sole source of Sage-grouse management direction. In a letter sent to the Interior Secretary on May 16, 2013 WAFWA member States made it clear that they never endorsed the sole use of the NTT or any other scientific publication. Rather, they believe that a variety of peer-reviewed publications which collectively provide the best available science for sage-grouse should have been used by BLM as the basis for conserving the Sage-grouse, thereby avoiding a listing under the Endangered Species Act (ESA). WAFWA went on to recommend that management and regulatory mecha-

<sup>1</sup>Science or Advocacy? Ecology and Conservation of Greater Sage-Grouse: A Landscape Species and its Habitats: An Analysis of the four most influential chapters of the monograph.

<sup>2</sup>(Holloran, M. J. 2005. Greater sage-grouse (*Centrocercus urophasianus*) population response to natural gas field development in western Wyoming. PhD Dissertation. University of Wyoming. Laramie, Wyoming.)

<sup>3</sup>Drought and Wildlife Survival—Wyoming Game and Fish Department, Sage Grouse Precipitation Drought Index.

nisms should be based upon the best available science which would provide the best strategy for near- and long-term management of sage-grouse and provides the best opportunity for precluding the need to list the species under the ESA.

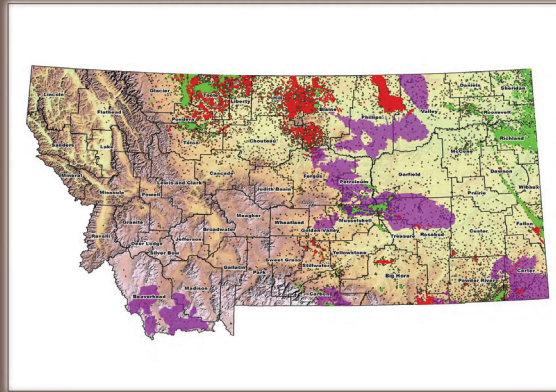
We point out that the International Research Center for Energy and Economic Development (ICEED) peer reviewed a paper entitled "Oil and Gas Development and Greater Sage Grouse (*Centrocercus urophasianus*): A Review of Threats and Mitigation Measures," Volume 35, Number 1, which was published by The Journal of Energy and Development. The paper pointed out that:

"Current stipulations and regulations for oil and gas development in sage grouse habitat are largely based on studies from the Jonah Gas Field and Pinedale anticline. These fields, and their effect on sage grouse, are not necessarily representative of sage grouse responses to less intensive energy development. Recent environmental regulations and newer technologies have lessened the threats to sage grouse."

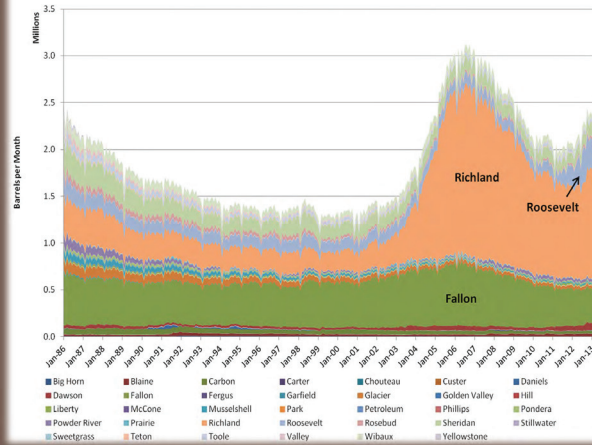
As a result of BLM's reliance upon the NTT Report and its recommendations, new oil and gas leasing, exploration and development in Montana will be essentially terminated in areas within sage grouse habitat if the measures proposed by BLM in its RMP revisions are adopted. Specifically, BLM has proposed the use of new No Surface Occupancy (NSO) stipulations on millions of acres of public lands as well as private surface/Federal minerals ostensibly to protect sage grouse and its habitat. NSO stipulations, which prevent the use of the surface area of the lease, would be imposed on 50 percent of the public lands in the Miles City FO, 70 percent in the HiLine FO and 60 percent in the Billings FO. Added to that, in the Billing Field Office, BLM is attempting to force the use of the same stipulations upon Federal minerals under private surface. We expect similar constraints to be used in the other field offices as well. BLM also proposes to make sizable portions of these areas off-limits to new right-of-way construction and even goes so far as considering forcing the removal and replacement of existing rights-of-way to areas outside sage grouse habitat.

In conclusion, while we support efforts to avoid a listing of the Greater Sage-grouse as a threatened or endangered species, we are disturbed that the DOI has embraced the notion that habitat destruction is the single most important factor impacting the sage-grouse, particularly that from oil and gas development, which as pointed out earlier in this testimony has been proven to be a fallacy. While we acknowledge that unmitigated habitat destruction may play a role, albeit much more limited than acknowledged by the agencies, in the survival of the sage-grouse, weather and predation are extremely important factors that have been essentially ignored by the agencies when determining how best to manage habitat. To date, DOI's focus has been to find ways to prevent or minimize human uses of habitat based upon flawed studies and reviews contained in the NTT Report. Nevertheless, it is patently obvious that DOI's tunnel vision will not result in essential improvements to the widespread degraded habitat managed by Federal agencies nor will it address the significant problem of extensive predation throughout the Western States. Instead, it will shift DOI's burden and responsibilities to public land users in discrete areas where they have activities while failing to address the problem as a whole. Nevertheless, the Greater Sage-grouse will continue to survive to the best of its ability while the economy of the public lands States will suffer draconian declines due to unjustified limits on multiple-use and revenue generating activities.

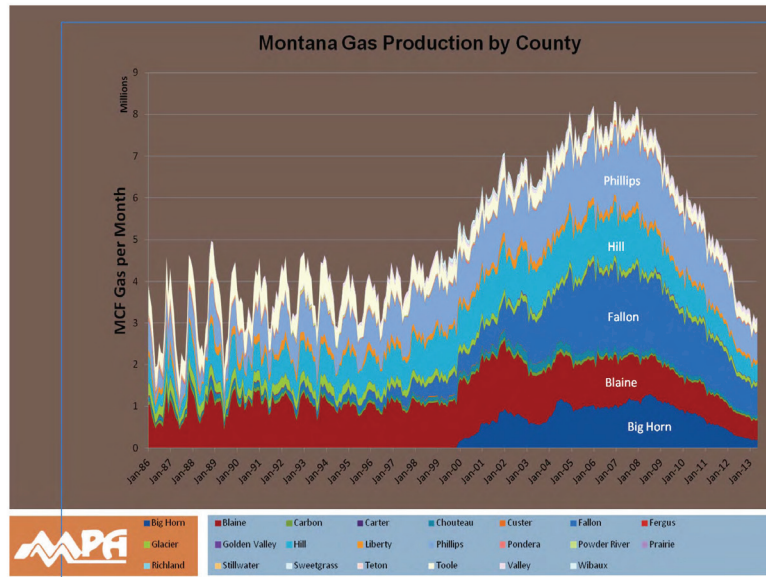
## Sage Grouse Core Areas



## Montana Oil Production by County







The CHAIRMAN. If you would like to, if you have other studies that you want part of the record, we would welcome that.

Mr. GALT. Yes, sir. I will get them in, provide them.

The CHAIRMAN. Without objection, they will be part of the record.

OK. Thank you very much, Mr. Galt.

Now, I will recognize Mr. Brian Cebull from here in Billings. Mr. Cebull, you are recognized for 5 minutes.

#### STATEMENT OF BRIAN R. CEBULL, BILLINGS, MONTANA

Mr. CEBULL. Thank you. Good afternoon, Chairman Hastings and members of the committee. My name is Brian Cebull, and I am a third generation Montana native. Although I have spent my entire 20-year professional career in the oil and gas business, I am here today representing myself as a Montana landowner and a Montana sportsman.

My wife and I own a unique ranch located in Carbon County, only 1 hour south of Billings. Grove Creek Ranch consists of our deeded acreage, plus over 15,000 acres of BLM grazing leases, and contains a healthy population of sage grouse, a very active population of grizzly bears, and an occasional wolf. I have included a few photos of these bears for your entertainment in my written testimony.

My experiences and those of my tenants in dealing with grizzly bears highlight the flaws of the current ESA process and the need to keep species, such as the greater sage grouse, off of that list.

To summarize my observations and those of my tenants regarding how the ESA affects our ranch operations, when it comes to

dealing with problem bears, the top down and centralized approach of the current ESA management lacks common sense and does not work in Montana. More authority to address problem animals in habitat needs to be placed in the hands of local personnel, including ranchers and landowners. The ranchers and landowners know best how to manage their own land. Those in charge of administering the ESA should have the ability to change and adapt local management plans as necessary.

With the increasing grizzly bear population in our area, we have seen outdated management plans that are resulting in ever-increasing bear-human-livestock conflicts. Based on the staggering 27 individual grizzly bears that biologists estimate to live along a 20-mile span of the Beartooth Mountains near our ranch, and the expectation that this number is increasing, I have concluded myself that politics, and not science, is influencing these grizzly bear population estimates in order to maintain pressure to keep the bear on the list. All too often the determination to list or to remain on the list is being made by Federal judges instead of scientists. The ESA and the decision to list or delist should be based on sound science and not politics.

The ESA is a hammer. It is a threat that is constantly held over the heads of all private landowners and groups that utilize public lands either for recreation or for their livelihood. The heavy-handed "do this or else" style of the ESA will create as disincentive among those affected local groups, and will result in the opposite effect of what was intended by the act.

The ESA has become a listing tool that restricts activities and not a management tool for the recovery of species. Since it became law in 1973, over 2,000 species have been listed as endangered, and only 20 species have been removed from the list due to population recovery. The ESA has become a tool for pseudo environmental groups to hinder economic development and recreational activities on both public and private lands.

The potential listing of the greater sage grouse under the ESA is already affecting our ranch operations. And based on our experiences with the already listed grizzly bear, it is in everyone's best interest to take steps to keep them off the list.

We are under continuous pressure to reduce our AUMs on grazing allotments already to enhance sage grouse habitat. Responsible rotational grazing practices actually improve the health of the land and the forage available for wildlife, including sage grouse. There is little doubt that a listing of the sage grouse will result in immediate pressure to stop all grazing on public lands in critical habitat areas.

The top down, heavy-handed, and centralized approach to management that we see with the grizzly bear lacks common sense and will not work with sage grouse. Landowners like myself and local groups, such as Sage Grouse Montana, are already working voluntarily to improve the habitat for sage grouse and other species on our private property, and are working with the BLM to ensure responsible grazing rotations on our public lands. These grass roots efforts to protect sage grouse will almost certainly come to a stop if the bird is listed.

As a lifelong hunter and a President of the Montana Chapter of Safari Club International, the listing of sage grouse will have a profound impact on our hunting heritage in Montana for all species. In addition to the loss of sage grouse as a game bird, hunters will lose access to thousands of acres of private and public lands that they have used for generations. The critical habitat areas that will be shut down or have severely restricted access are any areas that are suitable areas, and will not even require sage grouse to be present on them.

The ESA has and will continue to have a profound impact on Montanans and our way of life. We have seen the politically motivated management of listed species, such as wolves and grizzlies, result in dramatic declines in big game populations, resulting in lost hunting opportunities and devastating impacts to local businesses. Future ESA listings, such as the possible listing of sage grouse, will have similar negative impacts on both public and private lands, and those who rely on these lands both for recreation and for their livelihood.

I strongly encourage you to focus on local control and voluntary efforts to restore sage grouse habitat, and to do everything in your power in Congress to make sure that greater sage grouse does not get listed under the ESA. Please help me ensure that the ESA can no longer be used as a tool for fringe environmental groups to dictate how we live and work in Montana.

There is a new war in the West, and it is a war on our traditional Montana values.

Thank you for the opportunity to testify today.

[The prepared statement of Mr. Cebull follows:]

PREPARED STATEMENT OF BRIAN R. CEBULL, BILLINGS, MONTANA

Chairman Hastings and members of the committee, thank you very much for allowing me to testify before your committee. I am Brian Cebull, a 3rd generation Montanan who is proud to call this great State my home. I work in Billings in the oil and gas industry as the owner of a small exploration and production company as well as the co-owner of an innovative environmental service company in the Williston Basin.

While the oil and natural gas business provides my livelihood, I did not come here today to testify about oil and gas development and the negative impacts that ESA listing of the sage grouse will have on my industry. Instead, I am here today to testify as a Montana landowner who lives with endangered and threatened species and as a sportsman who has a passion for hunting.

My wife and I own Grove Creek Ranch in southern Carbon County Montana that is comprised of deeded acreage plus more than 15,000 acres of BLM grazing leases. Our deeded land consists mostly of spring-fed riparian land with grassy bottoms and aspen groves. Our land is unique in that it is home to a variety of wildlife including whitetail deer, moose, elk, black bears, occasional wolves, and is located in designated core sage grouse habitat. According to Montana FWP biologists, there are four active sage grouse breeding leks either on or adjacent to our deeded land at Grove Creek. In the spring of 2011 we encountered our first grizzly bear and now have documented more than 12 different grizzlies in the last 2 years including capturing a video of a grizzly sow with 4 cubs of the year this past June. I have included a few photos of grizzlies at our ranch at the end of these comments. My most recent encounter with a grizzly on my ranch was just this past Saturday evening.

Our experiences with the already listed and "endangered" grizzly bear is an important lesson when considering adding another species to the ESA list. Based on our observations and those of our tenants who graze cattle on our land:

- It is obvious that the population of grizzly bears in the greater Yellowstone ecosystem is being underestimated for political purposes. Based on my observations and those of my tenants, the number of bears in the 3 State area of that makes up the Yellowstone ecosystem must greatly exceed the 600 bears

that has been used as a common estimate. A local scientific estimate indicated that there were 27 individual grizzly bears during the 2011–2012 season on the Beartooth mountain front between Red Lodge, MT, and Clark, WY, a span of only 20 miles! So far in 2013 there have been 11 individual confirmed sightings of bears in the same area and 9 of those were confirmed on our ranch at Grove Creek. According to local biologists, bear sightings and encounters are getting much more frequent in our area. Common sense says that the actual number of bears must be several times higher in the entire Yellowstone ecosystem based on the high number of bears seen in our small area.

- The current population of bears has far exceeded the expected levels of the original endangered species management plan therefore the management practices of the plan is not effective in relationship to the current impact of the bears in regards to agriculture, sportsmen and recreational use. The same management plan for a declining species cannot work for a species whose population is rebounding. This lack of adaptability is leading to ever-increasing encounters and conflicts between bears, humans, and livestock.
- The management guidelines for grizzlies are unrealistic. In a particular instance with my tenants on their land in the Bear Creek area, a sow grizzly bear and her cubs had multiple livestock kills and were on the path to many more. When approached about this, the regulatory entity that was handling the situation labeled the bear as a first time offender because complaints had not been lodged against her in the past. With the existing guidelines, action was slow to be taken because she was a first offender in spite of the fact the fact that she had killed in excess of 10 animals that season. It was deemed that if the activity was repeated the next year, she would be labeled a problem bear and action would be taken. After strong lobbying at multiple levels of the government by my tenants, the number of kills was taken into account and she was removed and destroyed. Her cubs were relocated despite the fact that they would likely repeat the cattle-killing activities of their mother.
- With the excess population of bears and the ineffective management practices of the current endangered species plan, the bears are starting to push their boundaries and locate themselves in areas outside of their expected habitat. Our ranch on Grove Creek is one of those places.

As you can see, whether or not the ESA listing has helped grizzly bears, the current situation with grizzlies is not sustainable and needs to be remedied. Although sage grouse do not pose the same threats to humans and livestock as grizzly bears, a listing under the ESA will result in many of the same issues as the grizzlies with regards to ongoing management under the plan.

The potential listing of the sage grouse is already affecting our ability to utilize our BLM grazing allotments:

- There is a constant push when dealing with the BLM on grazing plans and permits that our carrying capacity or AUM's need to be decreased to increase habitat for sage grouse although there is little correlation between responsible grazing practices and the loss of sage grouse habitat or nesting areas. In fact, proper grazing practices can actually be beneficial to grouse as the cattle grazing creates new growth and succulents and regenerates fresh forage. Of course, historic overgrazing has led to declines in sage habitat and this irresponsible and short sighted behavior should be corrected by the local range management specialists wherever they are occurring. Even at Grove Creek, some of our historic BLM grazing was grazed beyond capacity by our predecessors and was very slow to recover, so we have rested some pastures for 2 years to allow them time to recover. All of our BLM pastures are rested at least every other year to promote healthy growth.
- No definitive proof has been given that the activity of livestock and other species is having a true long term impact on the sage grouse but there is consistent pressure from environmental groups to ban all grazing on public lands. Without a doubt, these so-called conversation groups will press legal action to enforce a ban immediately if the sage grouse is listed. Based on my on-the-ground observations, the populations of sage grouse in areas where no outside activity has occurred within the sage grouse's habitat are no better than where grazing, energy exploration or other activities have occurred.
- It seems folly that measures and management practices are being put into place through RMP's and grazing plans to affect certain aspects of the sage grouse food supply and habits, yet very few of those practices are directed toward other species within the same eco system. Many of these species such as raptors are also federally protected and are predators of the sage grouse,

and when they are out of balance, they could potentially negate the effects of the ESA management plan. With this considered, it makes any amendments or alterations to the management guidelines for other activities in the area even more egregious.

We bought our ranch both for investment and for hunting opportunities. As such, we work with our tenants to manage the grazing and crop lands to benefit both their livestock and wildlife. Hunting is a passion and a way of life for me, and I am currently the president of the Montana Chapter of Safari Club International. Our chapter has been actively promoting the mission of SCI which includes the conservation of wildlife, protection of the hunter, and education of the public concerning hunting and its use as a conservation tool.

- Hunters are true conservationists and their license dollars go directly to the preservation of habitat and the management of game species.
- Managing land for livestock grazing and for wildlife is beneficial to both big game and game birds such as sage grouse. Properly timed and intensive grazing rotations, the development of water projects, and the planting of high protein seed crops are just a few of the ways that we improve the habitat for wildlife including sage grouse.
- Hunting of animals creates a perceived value and respect of that animal in the public's eyes. The listing of the sage grouse will remove it from the hunting rolls and diminish its value, which is exactly opposite of the intent of the listing.
- In addition to being removed from the hunting roles in Montana, the listing of sage grouse will have detrimental impacts to access of both public and private lands due to the closing of access roads and corridors and potentially seasonal restrictions on access. The listing of sage grouse will possibly impact ALL hunting, especially in those areas deemed as core sage grouse habitat.
- The Montana FWP Commission has an established two bird-per-day limit on Sage Grouse during upland bird season. The Commission's bag recommendations are based on the sound scientific input of local FWP biologists and other local experts since it was found that regulated hunting with reasonable bag limits was not an additive mortality and did not decrease the number of birds that survived until the following Spring. This is a perfect example of local control and species management that will be derailed through an ESA listing.

It would be a big mistake to list the sage grouse or any other species under the current guidelines and practices of the 40 year old ESA which is outdated and unmanageable and does not yield the desired goal of species recovery. In my opinion, the ESA is broken and needs to be fixed:

- The ESA has become a listing tool instead of a management tool. It is fairly easy to be put on the list but it is nearly impossible for a species to be removed from it. There are currently over 2,000 listed species and only 20 have ever been removed from the list due to population recovery. This dismal 1 percent success rate does not include the species that went extinct after being listed.
- The ESA is a hammer or club that is held over the head of landowners, sportsmen, ranchers, recreationalists, and developers. It is a constant threat of "do this, or else". The constant threat of a listing is not an effective way to influence the behavior or actions of those people affected by the threat. Although many of the best practices of the affected groups will actually benefit the sage grouse and their habitat, the best way to influence behavior is to create and promote incentives that will positively impact both the threatened species and the impacted parties.
- The current ESA is a top-down, bureaucratic, and centralized approach to species management. Local control and grassroots efforts will work better to manage wildlife and habitats and will get much less pushback from affected parties. Control and incentives should be given to local authorities and landowners to maintain or improve habitats.
- The ESA has become more about politics and less about science. In the case of the grizzly and the northern gray wolf, Federal Judges and not scientists determined whether a species remained on the "List". When you consider the measly success rate for delisting, it indicates that the ESA is being used as a political tool by the environmental and so-called conservation groups to halt or slow down economic development and severely limit access on public lands for grazing, hunting, and recreation. Groups that fight to put species on the "List" also fight to keep them on regardless of any scientific evidence to the contrary because they are opposed to development or human activities or any

sorts. The “management by litigation” approach taken by environmental groups leads to many of the misguided efforts that we see today and unnecessarily burdens the personnel and financial resources of the Federal agencies involved.

- Management under today’s ESA for listed or pending species such as the sage grouse usually means doing “something” regardless of how much that “something” costs or the impacts that it has on current activities. Economic impacts need to be considered and should weigh heavily on decisions to list species.

Utilizing sound management practices including reasonable hunting limits, best grazing practices, and activity limits based on sound science, we are starting to make huge strides toward stabilizing the population of sage grouse, despite the fact that they are not currently listed. Most ranchers and landowners quite frankly don’t care about sage grouse being on their land—they’re neither an asset nor a nuisance. If the sage grouse is listed under the ESA, it will have profound impacts across all aspects of both public and private lands in Montana—hence the nickname the “spotted owl of the West”. We need to continue to make progress on the sage grouse using sound science and local management, and avoid listing of the sage grouse at all costs under the current flawed ESA. We need to work toward making legislative improvements to the current ESA process so that future listings will result in the desired outcome of species recovery and timely delisting.

The ESA and the species that are managed under this plan have had a profound impact on Montanans and our way of life. The improper management of species such as wolves and grizzlies has resulted in dramatic declines in elk and moose populations resulting in lost hunting opportunities and dramatically impacting the towns whose economies rely on hunting season. Future ESA listings will have similar and profound impacts on both public and private lands and those who rely on these lands both for recreation and for their livelihood. The ESA should be reformed and based on science, not politics, and should no longer be a tool for fringe groups to dictate how we live in Montana.



**Trail camera photo of grizzly sow with her three 2 ½ year old cubs at Grove Creek Ranch during April of 2012.**





**Photo of grizzly bear tracks near main gate and ranch buildings at Grove Creek Ranch, May 2013.**



**Trail camera photo of grizzly bears on Grove Creek Ranch from May 2013.**

The CHAIRMAN. Thank you very much, Mr. Cebull, for your testimony.

Next, I will recognize Mr. Channis Whiteman, a member of the Crow Tribe, recognized for 5 minutes.

**STATEMENT OF CHANNIS WHITEMAN, MEMBER OF THE CROW TRIBE, EQUIPMENT OPERATOR, CLOUD PEAK ENERGY, CROW AGENCY, MONTANA**

Mr. WHITEMAN. Good afternoon, Mr. Chairman and members of the House Natural Resources Committee. My name is Channis Whiteman, and I am a member of the Crow Tribe, and an employee

at Cloud Peak Energy's Spring Creek Coal Mine. On behalf of the Crow Tribe, I welcome you to Montana.

I am also happy to welcome you on behalf of Cloud Peak Energy. We are honored to have you in Montana and appreciate your interest in the issue that not only impacts the company I work for, but my tribe and my family.

Let me begin by giving you some background. The Crow Reservation is Montana's largest reservation with more than 2.2 million acres of land. The Reservation is home to more than 8,500 Apsaalooke tribal members.

You should also know that the Crow struggle economically. Our unemployment rate approaches 50 percent. Our young people are forced to leave our home in search of work. Others struggle with social problems associated with poverty, idleness, and despair.

This does not have to be. The Crow Reservation is a wealthy reservation. We are blessed with an abundance of natural resources, including timber, water, oil, gas, and renewable energy opportunities. We are also blessed with a massive coal deposit. And their work on behalf of the tribe, the BIA Division of Energy and Mineral Development has estimated that there are more than 9 billion tons of coal resources within the boundaries of the Crow Reservation. The Crow Tribe recently signed an option and lease agreement with Cloud Peak Energy, our neighbor to the east of our Reservation, with the intent and hope to develop some of those reserves.

Crow coal reserves could serve existing domestic markets, as well as the growing Asian market. It is a reserve the tribe is interested in developing because we believe it is a key to making us a self-reliant reservation economy that can provide good jobs for our kids and hope for all generations.

I know what I speak, Mr. Chairman, because I am a proud coal miner at Cloud Peak Energy's Spring Creek Mine. I am a heavy equipment operator; a job I have had with Spring Creek since 2005. Cloud Peak Energy is one of the largest coal mining companies in the United States. Cloud Peak owns and operates three mines in the Powder River Basin States of Wyoming and Montana.

In Montana, Cloud Peak Energy owns and operates the Spring Creek Coal Mine, the State's largest coal mine, which was responsible for about 48 percent of Montana's total coal production last year. And at a time when the Crow unemployment rate is near 50 percent, and the U.S. unemployment rate is over 7, coal mining provides safe, reliable, good paying jobs, jobs that feed families and create opportunities to make healthy communities.

But I know there are detractors who say the harm of coal mining to the environment outweighs the benefits of jobs and tax revenue created by mining. Some argue that we must choose between these good paying jobs and the environment.

Now, I don't know a lot about the Endangered Species Act or the legal issues surrounding the sage grouse. That said, I think we would all agree with Congress's worthy intentions when passing the Endangered Species Act. However, we must make sure that any actions to save a species also takes into consideration the human impact. The Endangered Species Act should not force us to



choose wildlife over humans and the economic opportunity necessary to my family and my tribe.

I am here to tell you that we can have both, thriving wildlife populations and good paying jobs created by coal. Mr. Chairman, let me be clear so all understand our position. Protecting the environment is of monumental importance to the Crow Tribe. Cloud Peak's reclamation work and operation mitigation efforts often result in improvement of wildlife habitat. I know this because I see this every day I go to work.

To give you a quick example, at the Spring Creek Mine, our reclamation work is second to none. If you look on the screen, you will see a photo of our award winning reclamation work. As a dozer operator, I have been involved in the re-grading of land after the coal has been removed, returning it to a condition most would argue is better than before we mined it. Reclaiming land specifically to provide habitat for a variety of wildlife species, including sage grouse is a permanent and ongoing operation.

We are creating a sage grouse habitat today at Spring Creek in places that were not sage grouse habitats before we mined it. And this restored and improved habitat is already bringing in wildlife, including mule deer, antelope, osprey and a wide variety of other native species.

Mr. Chairman, I am not a biologist, or a scientist, or an expert on sage grouse, but I do know Cloud Peak Energy takes its responsibility to the environment very seriously. If the implementation of laws like the Endangered Species Act fails to adequately consider people in the equation, then I fear efforts to save the Sage Grouse could lead to lost jobs, and the sage grouse will still lose habitat.

Restrictions that prevent Cloud Peak Energy from temporarily disturbing the land could lead to permanent impacts for me, my fellow coal miners, my family, and my tribe.

Mr. Chairman and members of the committee, the Crow Tribe is located in a rural part of Montana. We do not have a lot of options, but what we do have is a lot of coal. Coal brings good paying jobs and critical revenue to my tribe. In recent years, coal revenues from the only operation that currently mines Crow coal, Westmoreland Resources' Absaloka Mine, accounted for almost two-thirds of the tribe's revenues outside of Federal programs. To better provide for our people, the tribe needs to expand and diversify our coal revenue and jobs.

And that coal also gives us a lot of hope because it helps provides a path toward self-sufficiency, opportunity for my kids, and a choice for all the families that want to stay on their homeland. Good paying jobs do not have to come at the expense of the environment. We can have both. As a heavy equipment operator for a coal mining company and as a member of the Crow Tribe, I know we are already accomplishing both.

Let me finally say, Mr. Chairman and members of the committee, on behalf of Cloud Peak Energy, I extend an invitation to tour our Spring Creek Mine, a world class mine with world class employees, recovering a world class coal reserve. Thank you.

[The prepared statement of Mr. Whiteman follows:]

PREPARED STATEMENT OF CHANNIS WHITEMAN, MEMBER OF THE CROW TRIBE,  
EQUIPMENT OPERATOR, CLOUD PEAK ENERGY, CROW AGENCY, MONTANA

Good afternoon Mr. Chairman and members of the House Natural Resources Committee. My name is Channis Whiteman and I am a member of the Crow Tribe and employee at Cloud Peak Energy's Spring Creek Coal mine. On behalf of the Crow Tribe, I welcome you to Montana.

I am also happy to welcome you on behalf of Cloud Peak Energy. We are honored to have you in Montana and appreciate your interest in issues that not only impact the company I work for, but my tribe and my family.

Let me begin by giving you some background.

The Crow Reservation is Montana's largest reservation with more than 2.2 million acres of land. The reservation is home to more than 8,500 Apsaalooke tribal members.

You should also know that the Crow struggle economically. Our unemployment rate approaches 50 percent. Our young people are forced to leave our home in search of work. Others struggle with social problems associated with poverty, idleness and despair.

This does not have to be. The Crow Reservation is a wealthy reservation. We are blessed with an abundance of natural resources including timber, water, oil, gas and renewable energy opportunities.

We are also blessed with a massive coal deposit—in their work on behalf of the tribe, the BIA Division of Energy and Mineral Development has estimated that there are more than 9 billion tons of coal resources within the boundaries of the Crow Reservation.

The Crow Tribe recently signed an option and lease agreement with Cloud Peak Energy, our neighbor to the east of our reservation, with the intent and hope to develop some of those reserves.

Crow coal reserves could serve existing domestic markets as well as the growing Asian market.

It is a reserve the tribe is interested in developing because we believe it is a key to making us a self-reliant reservation economy that can provide good jobs for our kids and hope for all generations.

I know what I speak, Mr. Chairman, because I am a proud coal miner at Cloud Peak Energy's Spring Creek Mine. I am a heavy equipment operator; a job I have had with Cloud Peak since 2005.

Cloud Peak Energy is one of the largest coal mining companies in the United States. Cloud Peak owns and operates three mines in the Powder River Basin States of Wyoming and Montana.

In Montana, Cloud Peak Energy owns and operates the Spring Creek Coal Mine, the State's largest coal mine, which was responsible for about 48 percent of Montana's total coal production last year.

And at a time when the Crow unemployment rate is near 50 percent and the U.S. unemployment rate is over 7 percent, coal mining provides safe, reliable, good paying jobs.

Jobs that feed families and create opportunities and make healthy communities.

But I know there are detractors who say the harm of coal mining to the environment outweighs the benefits of the jobs and tax revenue created by mining. Some argue that we must choose between these good paying jobs and the environment.

Now I don't know a lot about the Endangered Species Act or the legal issues surrounding the sage grouse. That said, I think we'd all agree with Congress's worthy intentions when passing the Endangered Species Act.

However we must make sure that any actions to save a species also takes into consideration the human impact. The Endangered Species Act should not force us to choose wildlife over humans and the economic opportunity necessary to my family and my tribe.

I am here to tell you that we can have both—thriving wildlife populations and good paying jobs created by coal. Mr. Chairman, let me be clear so all understand our position. Protecting the environment is of monumental importance to the Crow Tribe.

Cloud Peak's reclamation work and operation mitigation efforts often result in improvement of wildlife habitat.

I know this because I see it every day I go to work.

Let me give you a quick example. At the Spring Creek Mine, our reclamation work is second to none. If you look on the screen, you will see a photo of our award winning reclamation work. As a dozer operator, I have been involved in the re-grading of land after the coal has been removed, returning it to a condition most would argue, is better than before we mined.

Reclaiming land specifically to provide habitat for a variety of wildlife species including sage grouse is a permanent and ongoing operation.

We are creating sage grouse habitat today, at Spring Creek, in places that were not sage grouse habitat before we mined. And this restored and improved habitat is already bringing in wildlife, including mule deer, antelope, osprey and a wide variety of other native species.

Mr. Chairman, I am not a biologist or a scientist or an expert on sage grouse. But I do know Cloud Peak Energy takes its responsibility to the environment very seriously.

If the implementation of laws like the Endangered Species Act fails to adequately consider people in the equation, then I fear efforts to save the Sage Grouse could lead to lost jobs, and the sage grouse will still lose habitat.

Restrictions that prevent Cloud Peak Energy from temporarily disturbing the land could lead to permanent impacts for me, my fellow coal miners, my family, and my tribe.

Mr. Chairman and members of the committee, the Crow Tribe is located in a rural, remote part of Montana. We don't have a lot of options.

But what we do have is a lot of coal. And that coal brings good paying jobs and critical revenue to my tribe. In recent years, coal revenues from the only operation that currently mines Crow coal—Westmoreland Resources' Absaloka Mine—accounted for almost ⅓ of the tribe's revenues outside of Federal programs. To better provide for our people, the tribe needs to expand and diversify our coal revenue and jobs.

And that coal also gives us a lot of hope because it helps provides a path toward self-sufficiency, opportunity for my kids and a choice for all the families that want to stay on their homeland.

Good paying jobs do not have to come at the expense of the environment. We can have both. As a heavy equipment operator for a coal mining company AND as a member of the Crow Tribe, I know we are already accomplishing both.

Let me finally say, Mr. Chairman and members of the committee, on behalf of Cloud Peak Energy I extend an invitation to tour our Spring Creek Mine, a world class mine with world class employees, recovering a world class coal reserve.

Congressman Daines toured the Spring Creek Mine in 2012 and I suspect he would be willing to attest to the impressive nature of our operation. Thank you again Congressman Daines for your interest in our mine and issues that affect my livelihood and for your efforts to bring this hearing to Montana.

The CHAIRMAN. Thank you very much, Mr. Whiteman, for your testimony.

And last, but certainly not least, we will go now to Mr. Kerry White, who is the Executive Director of Citizens for Balanced Use based out of Bozeman. Mr. White, you are recognized for 5 minutes.

**STATEMENT OF KERRY WHITE, EXECUTIVE BOARD MEMBER,  
CITIZENS FOR BALANCED USE, BOZEMAN, MONTANA**

Mr. WHITE. Thank you, Mr. Chairman. A correction on that. I am one of the 12 executive board members. We have no paid employees. We are all volunteers because we feel very passionate about what we are trying to do. We are a multiple use organization trying to educate the public on the importance of multiple use recreation, active resource management, and active forest management, responsible resource development.

I brought a prop with me, and I would like to show it to you. This is a draft environmental impact statement, over 1,200 pages, on one project in the Gallatin. This is the final environmental impact statement, another 1,500 pages, on one project in the Gallatin. These both represent one project. This is what is given to the public to comment on. About 90 percent of the information in here has to deal with threatened species, endangered species, species' habitat. A lot of it is under the Endangered Species Act, whether it is

grizzly bears, wolverines, big horn sheep, big horn goats, the list goes on and on—cutthroat trout, bull trout, it does not matter.

But I am here today to try to look at the social aspect of what is going on out here. Rural America is dying. My wife and I took a 3,000-mile trip to 9 Western States the end of July, and I am sorry to say we did not visit Colorado, and we did not go to Wyoming. But we did go to Idaho, and we did go to Chairman Hastings' State, LeGrande, Baker City, California, Nevada, Idaho, eastern Washington. And what we found was on these two-lane highways was that in these small towns, boarded up businesses, houses needing paint, roofs, old cars in the driveway.

Talking to the people in the stores and the restaurants and the gas stations, what they were frustrated with was being locked out and off of their Federal managed public lands. Their timber jobs were gone, the mining, the mineral, not the minerals and mining were not there, but that they could not get to them.

And I want to talk about this wheel that we kind of developed with CBU. At the top of the point up here is people, and that is what makes up communities, and it supports communities. If you are out there and you are trying to make a living, you want food, clothing, shelter. Agriculture here, which was talked about on the panel, that is the food source, and it also generates some of our current energy supplies, too, which I think is kind of foolish, but that is what we do.

Watershed, we need water, and these forest fires out here, we will see the devastation to our watersheds next spring when the snows melt. And that is very sad, sickening to me to see this renewable resource go up in smoke. Timber to build our houses and homes. Minerals supply everything from this pointer, to my cell phone, to everything in this room. They supply our energy, turn the lights on. All of these provide jobs for those people in those communities.

But what I am here today to tell you about is what I talk to the people about, and that is the social and mental well-being of these people that want to live and thrive and work in these local rural communities. They cannot. They cannot because they cannot get to the resources that enables them to have a job.

And at the bottom of this wheel here, you will see recreation. And when you go out and you work 5 days a week, or 6 days a week, or 7 days a week, and you get off in the afternoon, and you want to go out and play, and I do not care what you want to do, whether it is cross country skiing, or snowmobiling, or rafting, or boating, or playing golf, or going bowling, it is recreational activities that you spend with your family and your friends. You spent it with your grandparents, and now you want to spend them with your kids, and you want to spend them with your grandkids.

I attached my testimony to the committee. It has a picture of my family. There is some great information in there, attachments on what we are breathing from these fires. But recreation is what keeps us mentally revitalized. And when you take away the access to agriculture, minerals, timber, and to our watersheds because of fish or some animal, you take away access to recreation. And when you take away access to recreation, what you do is you force those people into their little iPads, their iPhones, their computer games.

You take them out of the outdoors, and that is what's important to people is being outdoors.

We had a survey done in Gallatin County: do you like passive recreation or active recreation? Three-quarters of the people wanted active recreation. That is outdoor, out in the woods, out on our public lands recreating. If you take that away from us, you are taking away our social, health, and well-being.

And the main culprit—I am not blaming you, I am not blaming anybody. I am not even blaming the environmental groups. But Congress has given them the tools to be able to do this, and we need to take those tools away from them.

Thank you very much.

[The prepared statement of Mr. White follows:]

PREPARED STATEMENT OF KERRY WHITE, EXECUTIVE BOARD MEMBER, CITIZENS FOR  
BALANCED USE, BOZEMAN, MONTANA

I am Kerry White representing Citizens for Balanced Use (CBU). Thank you for accepting the following comments from CBU regarding the abuse of the Endangered Species Act by environmental groups.

CBU is a grass roots 501(c)3 non-profit organization dedicated to the education of the public in the importance of multiple use recreation, responsible resource development and active forest management. CBU has over 6,500 active members and hundreds of supporting businesses in Montana and other Western States. CBU, through its supporting and affiliated organizations, reaches over 100,000 people in our mission of bringing together different public land user groups. Our supporting organizations include resource industries, agriculture organizations, and numerous recreation groups of all sizes and interests.

CBU was formed in 2004 in response to the closure of more than half of the multiple use roads and trails in the Gallatin National Forest (GNF) Travel Management Plan. Our organization solicited and helped people submit over 140 appeals on this decision and yet all were dismissed and the Record of Decision was issued. CBU filed litigation on this flawed action but lost in the liberal Federal court in Missoula. We appealed the decision to the 9th Circuit only to lose again. Most of the reasons to justify the closures in the Travel Plan revision used by the Forest Service revolved around the Endangered Species Act (ESA). The ESA is used by the Forest Service and environmental groups as the tool of choice to close our federally managed public lands to access, occupancy and use.

In the B-D Forest Plan revision the Forest Service designated many areas of the forest as non-motorized and non-mechanized. After the Forest Plan revision was complete the Forest Service began travel planning in specific areas of the forest. The Forest Service refused to conduct site specific road and trail inventories for travel planning in areas designated as non-motorized and non-mechanized in the Forest Plan revision. We were told these areas were already designated as non-motorized and non-mechanized and there would be no reason to evaluate the road and trail facilities in these areas. These areas were essentially turned into defacto wilderness by the Forest Service by removing all motorized and mechanized use even though there were historic motorized and mechanized roads and trails in these areas. Many of the reasons used by the Forest Service again revolved around the ESA.

Many of the animals and issues being used to close access include Grizzly Bears, Lynx, Wolverine, Mountain Goats, Big Horn Sheep, West Slope Cutthroat, Bull Trout, Goshawk, Wolves, Big Game cover, old growth timber and more. Justifications for their actions were not always about a species being present but many times just the fact that these areas could provide habitat was sufficient to close them to human activity. Human activity is a worthwhile use of the land and laws like ESA allows Federal agencies to close potential habitat based on bad science to mechanical use and other uses that families in Montana have been using for generations.

Our 12 executive board members of CBU are business owners, property owners, farmers, ranchers and family oriented people who have been here for several generations. None of our board are paid for their time and dedication to our efforts. It sickens us to see the misuse of the ESA to close these areas where we spent time with our grandparents, parents and children. We wish we could enjoy these areas with family and friends today but because of abuse of the ESA and flawed decisions by the management agencies these precious opportunities are now forever lost.

The GNF Travel Planning process is another example. During the GNF Travel Plan process I conveyed to the Forest Service that access to areas considered for closure are places where I have fond memories of recreating with my parents and grandparents. In this travel plan, 50 percent of the GNF is closed to multiple use access. The Forest Service seems to not understand the benefit of these traditional Montana pastimes. Their management prohibiting multiple use is offensive to the way of life of people like me in Montana and is unacceptable.

I understand not everyone like some Forest Service personal are as lucky as I have been to have grown up in this beautiful part of Montana; but the impact on the local communities, other families like mine, and traditional uses of the land must not be ignored. The impact on the local community, not bureaucrats, must be a critical part of any land management analysis.

Laws like the ESA allow groups like Forest Service Employees for Environmental Ethics, Center for Biological Diversity, and WildEarth Guardians to keep Montanans and those who love to travel here from experiencing the great outdoors.

One of our board members is an engineer for an aerospace company. We were discussing the Forest Service and how they continue to prepare NEPA documents that do not hold up in court. He told me that in his industry, if their company were to engineer something that caused a plane to crash; the first thing they would focus on would be why it failed. The Forest Service on the other hand spends millions of dollars developing and preparing an EIS document to comply with NEPA and at the end of the day it fails in court. The DEIS and FEIS documents prepared for the GNF Travel Plan numbered over 2,500 pages. This is unreasonable to require the Forest Service and BLM to continue to prepare these large complex documents and simply not fair to the general public to require them to read, comprehend and comment on this amount of information.

This information is concerning to CBU and should be concerning to Congress. Multiple NEPA EIS documents are prepared for the exact same project and they continue to be flawed, incomplete, and not stand up in court time after time. The main content of NEPA documents, that continue to fail, is insufficient analysis of wildlife under the ESA. Whether it is wildlife disturbance, potential loss of habitat, old growth cover or any other wildlife related issue, the ESA is destroying rural America. Something must be done. CBU believes that some environmental groups are using the tools like the ESA to stop use of our public lands.

Case in point. When the B-D Forest Plan revision was being started in 2007, Forest Service officials included approximately 350,000 acres of new wilderness in the plan even though no analysis of wilderness character lands was completed. Forest Service officials feel pressured to base decisions like these due to the threat of litigation from some environmental groups. The Forest Service must be able to manage our lands so that the land continues to support our robust recreation and resource industries for generations ahead. With laws like ESA and NEPA establishing a framework for obstructive environmental lawsuits, smart land management is impossible.

It is also disturbing to CBU that obstructive environmental groups profit from keeping responsible resource management projects from proceeding by the American taxpayer. Obstructive environmentalism is a business and our Federal Government and the courts are doing a great job in funding them. Take for example the Equal Access to Justice Act. When environmental groups prevail in court they are reimbursed through the EAJA for attorney fees and witness fees and court costs. Reports CBU have seen show environmental groups are collecting over \$1 billion per year through the EAJA. These funds are tax dollars and are paid to these groups from the budgets of the agencies where the litigation occurred. If litigation is filed on a project in the Gallatin National Forest and the court rules in favor of the environmental group, those EAJA funds come from the budget of the GNF. This has greatly impaired the ability of specific forests to complete necessary trail and road maintenance or campground and facility improvements. Moreover, keeps funds away from supporting life-saving fire suppression.

## ROAD AND TRAIL OBLITERATIONS



Most litigation revolves around the Endangered Species Act (ESA) so in fact the ESA is the root of the problem. In an effort to reduce the backlog of road and trail maintenance it becomes somewhat easier for the Forest Service to just remove that facilities or campgrounds from the inventory. This is occurring throughout the Western States by both the Forest Service and BLM.

I am 59 years old, married 31 years to Patty, have 3 children, Kim (married to Nick), Tim and Brian, and 2 grandchildren Owen and Nora. My great grandfather came to the Gallatin Valley in 1864 and we still operate the family ranch. I am the current president of the Gallatin Sons and Daughters of the Pioneers and a Montana House member representing District 70.

My grandfather and grandmother built a cabin in the Squaw Creek drainage of the Gallatin River in 1934 on Forest Service lease ground and at that time the lease was \$35 per year. Today that yearly lease exceeds \$1,700. Back then the Forest

Service encouraged people to enjoy and experience our public lands. Not true anymore. I remember spending time with my grandfather (Bud) at the cabin fishing and hunting. I remember the District Ranger one day stopping by and telling Bud that he was heading up the drainage and working his way south to Buffalo Horn (about 40 miles) on his horse and pack string to look at the condition of the forest. He asked my grandfather to look after things while he was gone for a few days. This was the way it was, Forest Service employees working with the people and also being out in the forest, on the ground, caring for the land.

A few years later I remember riding down the Squaw Creek road with Bud in his old 62 Dodge Dart and as we passed the District Rangers living quarters at the head of Squaw Creek he turned to me and said, "Well there goes the forest". This statement startled me and I surprisingly turned to him and asked what he meant. He explained to me that the District Ranger, the one responsible for managing the Gallatin Forest, was moving to town. He told me in no uncertain terms. "Now how in the world can you manage a forest from an office in town?" He was completely right in this statement because we have seen our forest go from a once lush green garden to an ocean of dead, dying and diseased timber. An agency once supported by harvested timber creating good paying jobs and supporting the local community tax base now is an agency draining our Federal budget and managing these lands from behind a desk using maps, satellite imagery, modeling, assumptions, predictions and skewed data provided by agenda-driven environmental groups funding so-called scientific studies with a predetermined outcome. The tool of choice again is the Endangered Species Act.

Contrary to the intent of the ESA, this management technique continues to fail and as a result all things suffer. The environmental groups want to stop active mechanical treatment of our renewable timber resource and they use the ESA to further this agenda. Let us look for a moment what affect this management technique is having on the land, the animals, the water and our air. Two recent articles in the Bozeman Daily Chronicle revealed the true cost of smoke generated by forest fires. The American Lung Association and the Montana DNRC both stated that smoke from forest fires was prematurely KILLING people with pulmonary disease and respiratory problems. Raging fires are so intense because of the overgrown forest and lack of active management that the soils in many cases are sterilized and baked. Animals unable to escape these fast moving fires are consumed and killed. The fish in our streams are baked and the soil erosion from rain, no longer able to be absorbed, suffocates what fish remain. Millions and billions of dollars spent trying to contain these monster fires and protect homes and property while putting lives at risk. This is environmentalism at its finest.



## ENVIRONMENTAL COST OF FIRE



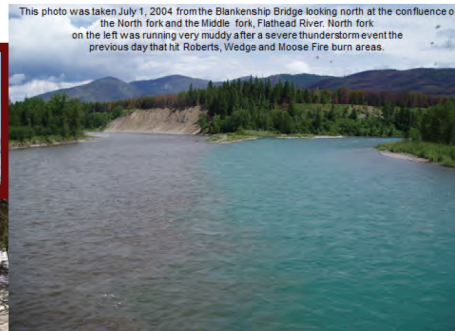
Photo by  
A wild turkey could not run or fly the Derby fire as it swept through Beehive, Mont. (DAVID GRUBBS/Gazette Staff)



Photo by  
A fire storm ripped through Beehive, Mont., so fierce even the wildlife could not get away. This mule deer buck was laying in an open field just on the edge of the forest. (DAVID GRUBBS/Gazette Staff)



**Property  
Damage**



This photo was taken July 1, 2004 from the Blankenship Bridge looking north at the confluence of the North fork and the Middle fork, Flathead River. North fork on the left was running very muddy after a severe thunderstorm event the previous day that hit Roberts, Wedge and Moose Fire burn areas.



I worked 5 years as a subcontractor on the forest fires as a camp mechanic. I inspected vehicles coming on the fire and before they left to make sure they were safe. I repaired broken vehicles and equipment and had access to everyone and every department in fire camp. During that time I was astounded at the waste and abuse of government money. A fire camp of 900 would usually be 600 administration and 300 fire fighters.

I believe we are wasting valuable resources in fighting these fires. We are wasting vast amounts of money, 40 percent of the Forest Service budget on these preventable fires. We are wasting a valuable renewable resource by letting it burn. We are polluting our streams and air. We are killing millions of animals unable to escape these fires. Most of all we are wasting the valuable resources of our rural communities and the people wanting to live in them. This is unacceptable to waste such a precious resource when we could be doing so much with it.

When I was growing up I never experienced the smoke like it appears today. Many environmental organizations claim it is because of global warming. They are

ignoring the fact that timber harvests have been stopped by their own groups which allow forests to burn, polluting the air.

CBU is working every day to educate people on what would be a better solution to our public land management needs. Good jobs created by active forest management and responsible resource development and taking care of our environment rather than letting it deteriorate, waste away and burn. There is social and mental well-being and better health resulting from people enjoying multiple use recreation and access. CBU has received numerous letters and emails from folks serving our country in the military. Some of these brave Americans have been disabled and injured. These folks need some type of motorized and mechanized transport to enjoy our public lands. Many of these people have thanked us for trying to keep these precious places open to them and their families when they return home. The very fabric of our Nation is being destroyed by these obstructive environmental groups attempting to remove people from the land. We are happy to continue this fight on their behalf and a fight it is.

Recently Patty and I decided to take a 3 week journey covering 9 Western States on our motorcycle. We wanted to take the back road two lane highways and see for ourselves the economic recovery that many in Washington, DC are telling us about. We visited with hundreds of people along the way in small towns and communities. What we saw was boarded up businesses on main streets across the West, houses in need of repairs and paint, streets and schools in disrepair and old vehicles parked in driveways. What was even more alarming was what we heard from these people living in the small communities.

We listened to story after story about how once these towns were booming with timber jobs, mining and small farms. Businesses once booming on Main Street were being turned into vacant buildings and empty lots. The people are moving away in search of employment and opportunities. The children are forced to leave as these communities once vibrant are turning into ghost towns.

We continued to ask the one question of why and every time we asked, the answer was the same. "The environmental groups have shut down our resource industries." The environmental groups have turned to the tools given them by the government to stop resource industries and close access. Many stories reflected the passion of these people once able to use this land, care for this land, and recreate in and on this land. Stories of spending time with their ancestors visiting those special places that are now off limits and closed was a common theme. Roads obliterated, locked gates and signs of closures were frequently spoken of.

I have been hearing of this so-called economic recovery we are experiencing but to be very honest my wife and I saw no evidence of it in rural America. What we saw were people scratching to make a living and the broken dreams and promises all taken away by environmental groups and our Federal bureaucracy all in the name of an endangered fish or animal. There seemed to be little joy or hope in the eyes of these hard working rural Americans. This sight is something every person in Congress should see and every person serving in our Congress should hear.

These rural folks will tell you about the mismanagement of our Federal lands and their current condition. While obstructive environmental groups are profiting from Federal land mismanagement, the forests in the west are dead and dying with little relief in sight. You could see the disgust on the people's faces as they spoke of the waste that is happening to this resource.

Water in the West is sometimes scarce. Environmentalists are quick to point the finger at global warming as the cause when in fact there very well may be another proven factor for reduced stream flows and ground water levels. This factor is overpopulation of trees in the forest. Our forests are so dense and thick today that even the animals are moving to private land for forage. A pilot project was done in California where water tables and stream flows were recorded before and after a forest thinning project was completed.

After thinning this forest to healthy tree populations the ground water table rose 100 feet. Old stream beds once dry were once again flowing.

When the actions of these groups and those in our government agencies create the very problems we are seeing today, I find this dishonest and unacceptable. We have heard the new "don't ever waste a crisis" and we are seeing it today with the global warming hysteria. I believe the true crisis is out of control land management agencies throwing regulation after regulation at the people on a daily basis. Most of these Federal agency land managers and biologists don't know anything of the history and caring for the land. They are over educated bureaucrats sitting behind a desk looking at Google earth and creating models of predictions with flawed input data of E-stimates, S-peculations and A-ssumptions. Behold the ESA.

The spotted owl is a great example of how the ESA wrongly destroyed an industry and people's lives and years later we now know that it was not the timber industry

that was destroying this bird. But was it really about a bird or was it about destroying an industry? I believe it was the latter of the two. Once the industry and infrastructure was gone, the mission was complete. This industry could come back but only if long term predictability was in place and investors were assured a continued multiple year flow of raw material. This will take hard work on the part of our Congress and a President willing to support active forest management.

I talked about our trip around the Western United States and how people were depressed and saddened by what they see occurring on our public lands. I want to speak of social environments and the requirement of analysis of social impacts in developing and producing NEPA documents. Of all the NEPA documents produced on Forest Service and BLM actions it is clear they lack adequate social impact analysis.

Social well-being of a community is not solely based on jobs and income but also on mental well-being and feelings. A healthy community depends largely on recreation as a retreat from work and a hectic everyday life. Recreation can be passive or active. Passive being the organized sports like swim centers, football games, golf courses and walking trails. Active recreation is the opportunity to experience the outdoors in numerous ways like gold panning, snowmobiling, horseback riding, fishing, hunting, etc. In a survey done in Gallatin County, people were asked what type of recreation they prefer and 3 to 1 the people preferred active recreation. The current direction of the Federal land managers is to close recreational access to these lands. This directly affects the social health and well-being of those people living in these areas.

The other part of the required social analysis is the economic job loss. When the Forest Service and BLM prepare a social analysis on jobs for a proposed action they use what is known as the IMPLAN SYSTEM program developed in Colorado. This flawed technique requires data input of demographics, populations, income, businesses, etc. The problem with their analysis is they only use information from large metropolitan areas in determining the impact. For instance on a project in the B-D National forest they would use economic data from Butte, Missoula, Bozeman and Helena and ignore small communities like Dillon, Jackson, Lima, Wise River, Ennis, etc. The result of 10 lost jobs in Bozeman (pop. 65,000) as a result of an action is quite different than 10 jobs in Wise River (pop. 150). The failure to consider these impacts to small communities is destroying rural America with every action implemented. The Federal land managers claim they are doing this to comply with Federal requirements, which in most cases revolves around compliance with the Endangered Species Act, NEPA, Roadless Rule, Clean Water Act, Clear Air Act and the list goes on and on. How about compliance with the Multiple Use Sustained Yield Act or the Organic Act, or the Taylor Grazing Act, or the Mining Act? CBU has been told by these agencies that these latter Acts are old and outdated so these land managers ignore them.

In the Western United States much of the land is under Federal management. These lands were not relinquished to the States as were in the Eastern States when they came into the Union. As a result the Western States are disadvantaged as to the management of these lands and the loss of income to the States. Limited tax base, limited resource income, limited powers over these lands. Federal agencies are required by Federal law to coordinate their management policies and actions with local and State governments but in reality the Federal agencies have refused to comply with the coordination requirements. There are efforts underway today in several Western States to get the Federal Government to give these federally managed public lands back to the States. CBU believes this effort has merit. Who better to manage these lands than those most affected by how they are managed.

CBU believes we are at a critical stage in our history. We are losing our rural communities where our food is produced. We are losing the infrastructure to treat and harvest our forests. We are putting off limits millions of acres of federally managed public land to energy development. We are restricting private property use in a way never before seen in history. The worst thing of all is there seems to be no end in sight to this regulation madness.

In the United States today there is an effort to attack coal production and the burning of coal to produce electricity. I have heard that coal produces about 80 percent of our electricity nationally. Coal is a resource which the United States has vast reserves. One coal fired electricity generating plant is Colstrip which is in Montana. This facility supports 1,000s of good paying jobs and provides electricity for thousands of homes and businesses. I have included an attachment which shows this facility. Colstrip 1, 2, 3, and 4 are all working at capacity in this photo. The discharge from the 4 stacks is steam and NOT deadly carcinogens such as what is released from forest fires. You can see the beautiful clear blue skies over this community even with this facility running at capacity. So if letting our forests burn is

the right thing to do and is supported by the environmental organizations and producing electricity from coal is sinful and wrong and objected to by the environmental organizations, then my question is simply this, is it really about the environment or is it a business model of raising money to remove humans from the land.



CBU stands ready and willing to help develop solutions to these problems but we are not the decisionmakers. CBU will continue to educate people on the importance of responsible resource development, active forest management and access to multiple use recreation while protecting and defending the private property rights of everyone.

Thank you for accepting this brief testimony on behalf of Citizens for Balanced Use.

LIST OF CURRENT AND IMMEDIATE PAST ACTIONS AFFECTING NOT ONLY MULTIPLE-USE RECREATION BUT THE RESOURCE AND AGRICULTURAL INDUSTRIES WHICH IN TURN ADVERSELY AFFECT THE ECONOMIES OF LOCAL COMMUNITIES:

United States Court Of Appeals for the Ninth Circuit No. 01-35690 D.C. No. CV-96-00152-DWM

*Every Resource Management Plans and Planning Actions*

(inter-agency) Grizzly Bear Recovery Plan	(inter-agency) ICBEMP
(inter-agency) Northern Rockies Lynx Amendment	(inter-agency) 3-States OHV Strategy
B-DNF Continental Divide Trail near Jackson, MT	B-DNF Whitetail Pipestone Travel Plan
B-DNF 2003 Forest Plan Update	B-DNF Analysis of the Management Situation
B-DNF Continental Divide trail near Feely	B-DNF Continental Divide trail near Whitetail-Pipestone
B-DNF Social Assessment	B-DNF Mussigbrod Post Fire Roads Management
B-DNF & BLM Flint Creek Watershed Project	BLM Blackleaf Project EIS
BLM Dillon Resource Management Plan	BLM Headwater Resource Management Plan

BLM Arizona Strip Travel Plan	BLM Bruneau Resource Area Travel Plan
BLM Escalante Grand Staircase Monument	BLM Missouri Breaks Monument
BLM Moab Resource Management Plans	BLM National OHV Strategy
BLM National Mountain Biking Strategic Action Plan	BLM San Rafael Travel Plan
BLM Sleeping Giant Travel Plan	BLM Whitetail/Pipestone Rec. Management Strategy
BLM Lake Havasu RMP	BLM Sustaining Working Landscapes Initiative
BLM Rocky Mountain Front Scenery Evaluation Project	BLM Kanab Resource Management Plan
Bitterroot NF Fire Salvage EIS	Bitterroot NF Post-fire Weed Mitigation EIS
Bitterroot NF Sapphire Divide Trail	Bitterroot NF Forest Plan Revision
Caribou NF Travel Plan	Custer National Forest Travel Plan
EPA Tenmile Creek Watershed Plan	Flathead NF Robert Wedge Post Fire Project
Flathead NF West Side Reservoir Post Fire Project	Flathead NF Forest Plan Revisions
Flathead NF Moose Post Fire Road Closures	Flathead NF Spotted Bear Road Closures
Gallatin NF 2002 Travel Plan Update	Helena NF Blackfoot Travel Plan
Helena NF Blackfoot Water Quality Plan	Helena NF Cave Gulch Fire Salvage Sale
Helena NF Clancy-Unionville Plan	Helena NF North Belts Travel Plan
Helena NF North Divide Travel Plan	Helena NF Noxious Weed Plan
Helena NF South Belts Travel Plan	Helena NF South Divide Travel Plan
Helena NF Continental Divide National Scenic Trail	Humboldt Toiyabe NF Charleston-Jarbridge Road
Humboldt Toiyabe NF Spring Mountains NRA	Kootenai NF Bristow Restoration Project
Kootenai NF McSwede Restoration Project	Kootenai NF Forest Plan Revisions
Lolo NF Forest Plan Revision	L&CNF Judith Restoration Plan
L&CNF Rocky Mountain Front Travel Plan	L&CNF Snowy Mountain Travel Plan
L&CNF Travel Plan update	Montana State Wolf Plan
Montana State Trail Grant Program PEIS	Montana State Trail Plan PEIS
Montana FWP Statewide Outdoor Recreation Plan	Nez Perce NF Travel Plan Revisions
NPS Salt Creek Road Closure	NPS Yellowstone Winter Plan (snowmobile closure)
Payette NF Travel Plan Revisions	Sawtooth NF Travel Plan Revisions
USFS National OHV Policy and Implementation	USFS Forest Plan Amendments for Grizzly Bear Habitat Conservation
USFS National Strategic Plan 2003 Update	USFS Roadless
USFS Roadless Rule II	USFS Roads Policy
USFS National Land Management Plan Revisions	USFWS Bull Trout Recovery Plan
USFWS Westslope Cutthroat Trout ESA	USFWS CMR National Wildlife Refuge Road Closures
USFWS Sage Grouse Plan	

[From the Bozeman Daily Chronicle: Opinion, Friday, August 23, 2013]

#### REDUCING THE HEALTH IMPACTS OF WILDFIRES

(By Kim Davitt, Guest Columnist)

Summers in Montana are pretty magical, with plenty of sunny days and blue skies to enjoy hiking, camping, fishing and other outdoor activities. But, in recent years, summer also means wildfires. In many parts of the State, people have had to contend with a few smoky days, or even smoky weeks, spoiling outdoor plans.

Recent fires in Idaho and Montana are beginning to fill our communities with smoke. For those that suffer from asthma, COPD or another lung disease, even a few smoky days can be dangerous.

Montanans should stay indoors when outdoor air quality is bad. Wildfire smoke even impacts those without lung disease and can increase the risk for respiratory tract irritation and can cause more serious health problems, such as reduced lung function, bronchitis and even premature death. These risks are especially magnified for older adults and outdoor workers. Children require extra protection, because their fragile respiratory systems are still developing.

Immediate actions that can help reduce respiratory harm caused by wildfires include:

- People living near fire-stricken areas are encouraged to stay inside as much as possible with their doors, windows and fireplace dampers shut. Use the recirculation setting on air conditioners to avoid outdoor contamination. Using whole house fans is not recommended, because they bring in unfiltered outside air.
- Keep car windows and vents closed when driving through smoky areas. Air conditioning should be set to “recirculate” to avoid unhealthy outside air.
- Limit time outdoors, particularly if you smell smoke or experience eye or throat irritation.
- People with asthma should ask their doctors about any changes in medication needed to cope with smoky conditions. If you can’t reach your physician, use your medications as directed and closely follow your asthma action plan.
- If you choose to wear a dust mask for protection, use one labeled “N95” or “P100.”

The American Lung Association and other health professionals who are part of the Healthy Air Campaign are concerned about the health risks posed by wildfire smoke. Fires put fine particles into the air, which can irritate and damage our lungs. More smoke means more bad air days, more asthma attacks, more emergency room visits, and premature deaths.

Because climate change is fueling more drought-related forest fires, and power plants are the largest source of climate-changing carbon pollution, the American Lung Association has called on the U.S. Environmental Protection Agency (EPA) to set standards to lower power plant carbon pollution. Less carbon pollution will help rein in climate change that is fueling conditions that causes intense forest fires and could make efforts to reduce ozone (smog) tougher.

We call on Montana’s leaders in Congress to support these health protections.

*Kim Davitt is Montana initiatives manager for the American Lung Association. She lives in Missoula.*

[Bozeman Daily Chronicle August 25, 2012]

#### IDAHO FIRES BLOWING SMOKE OVER BOZEMAN

A handful of fires from Idaho are to blame for the cover of smoke that blanketed the Gallatin Valley on Friday. Zach Uttech, meteorologist with the National Weather Service in Great Falls, said fires such as the Mustang Complex, Porcupine Complex and the Mallard and Ditch fires in east-central Idaho sent smoke to the area. *“It’s basically aimed in that direction to go over southwestern Montana,” Uttech said. Even though winds pushed heavy smoke out of the Bozeman area by Friday afternoon, Uttech predicted that smoke would roll back in. But with weaker winds and cooler weather, Uttech said the smoke shouldn’t be a problem today. “I really don’t think it’s going to be as bad,” Uttech said. Smoke in the air can cause respiratory symptoms in sensitive people, aggravate heart or lung diseases and increase the likelihood of premature death in the elderly or people with cardiopulmonary disease, according to the Montana Department of Environmental Quality. Health officials advise people to limit their exposure to the smoky air by staying indoors and not exerting themselves outside. Today’s high is predicted to be 78 degrees, with a low of 40. The wind is expected to blow 2 mph.*

#### MONTANA 2012 WILDFIRE SMOKE EMISSIONS \*

[as of 9/9/2012]

	Forest	Non-Forest	Total
<b>Burned Area (acres)</b>	408,789	404,716	813,505
<b>Fuel Consumption (ton dry vegetation)</b>	3,416,104	1,093,744	4,509,848

## MONTANA 2012 WILDFIRE SMOKE EMISSIONS \*—Continued

[as of 9/9/2012]

	Forest	Non-Forest	Total
<b>Emissions (tons)</b>			
<b>Species:</b>			
Carbon Dioxide (CO <sub>2</sub> )	5,465,767	1,844,053	7,309,819
Carbon Monoxide (CO)	461,174	68,906	530,080
Methane (CH <sub>4</sub> )	25,006	2,122	27,128
Acetylene (C <sub>2</sub> H <sub>2</sub> )	991	262	1,253
Ethylene (C <sub>2</sub> H <sub>4</sub> )	5,842	897	6,738
Propylene (C <sub>3</sub> H <sub>6</sub> )	3,279	864	4,144
Formaldehyde (HCHO)	8,882	798	9,680
Methanol (CH <sub>3</sub> OH)	10,727	1,291	12,017
Formic Acid (HCOOH)	888	230	1,118
Acetic Acid (CH <sub>3</sub> COOH)	12,708	3,883	16,591
Phenol (C <sub>6</sub> H <sub>5</sub> OH)	3,484	569	4,053
Furan (C <sub>4</sub> H <sub>4</sub> O)	2,050	186	2,236
Glycolaldehyde (C <sub>2</sub> H <sub>4</sub> O <sub>2</sub> )	3,519	886	4,405
Hydrogen Cyanide (HCN)	2,835	448	3,284
Ammonia (NH <sub>3</sub> )	6,491	569	7,059
Nitrogen Oxides (NO <sub>x</sub> as NO)	6,593	4,266	10,859
PM <sub>2.5</sub> (fine particulate matter)	88,135	7,842	95,978
Propane (C <sub>3</sub> H <sub>8</sub> )	888	109	998
n-Butane (C <sub>4</sub> H <sub>10</sub> )	284	17	301
Isoprene (C <sub>5</sub> H <sub>8</sub> )	253	43	295
Benzene (C <sub>6</sub> H <sub>6</sub> )	1,879	219	2,098
Toluene (C <sub>6</sub> H <sub>5</sub> CH <sub>3</sub> )	820	87	907
Mercury (Hg)	0.83	0.04	0.87

\* Source: Shawn Urbanski Research Physical Scientist Missoula Fire Sciences Laboratory RMRS, U.S. Forest Service.

\* Methodology upon request from DEQ.

[From Loggers World, January 2013, Volume 49, Number 1]

## FOREST SERVICE ACRES HARVESTED

(By the American Forest Resources Coalition <http://www.amforest.org/>)

In a November 14 report, the Forest Service disclosed that the total acres harvested on its lands in FY 2012 was 208,639 acres. Keep in mind that the Forest Service manages over 191 million acres; thus they harvested timber on only .1 per cent of their lands.

The most used harvest scheme was thinning (113,719 acres) followed by sanitation harvest (30,538 acres) and selection cut (16,283 acres). Harvest by Regions from largest to smallest were: Region 9—42,847 acres; Region 8—42,084 acres; Region 6—39,117 acres; Region 2—28,422 acres; Region 5—21,860 acres; Region 1—12,662 acres; Region 3—11,014 acres; Region 4—9,560 acres; and Region 10—1,063 acres.

According to the Forest Service's Forest Restoration Strategy (Increasing the Pace of Restoration and Job Creation on our National Forests—February 2012), there are between 65 and 82 million acres of National Forest System lands in need of restoration. Of those acres, approximately 12.5 million require mechanical treatment. If we stay on this current pace of harvest and restoration, it would take over 60 years to get those acres treated, not counting new acres that become in need of restoration.

Thanks to Bill Imbergamo and the Federal Forest Resource Coalition for sharing this data.

## RESTORING A FOREST WATERSHED AND ADDING WATER BACK TO THE LAND

(By Dan C. Abercrombie, [abercrombie@tularosa.net](mailto:abercrombie@tularosa.net))

Historical evidence clearly shows a significant decline in both stream flow and ground water recharge in the Sacramento Mountains of southern New Mexico. Photos, oral history, early Census data, and written accounts all paint a much wetter picture than is present today. Dense forests are robbing springs and streams of surface flow. Ground water recharge during the recent drought was non-existent.



Large numbers of wells all over Otero County dried up. Drilling deeper was successful in some areas, but people in some areas are still hauling water.

Members of the Sacramento River Watershed Coalition recently completed several large thinning projects near Timberon. Several thousand acres of Ponderosa pine and alligator juniper have been thinned and restored to historical tree densities. Trees were thinned on both private and State Land using Senator Jeff Bingaman's Forest Restoration funds, State Forestry Wildland/Urban Interface funds, NRCS Environmental Quality Incentive Program cost share, BLM, and the rancher's input. Tree densities were reduced to improve ground cover and reduce danger of a crown fire.

The Otero Soil and Water Conservation District began monitoring static water levels in five wells in the watershed about 3 years ago. Following the treatment and decent summer precipitation, water rose about 100 feet in a well below the treated area. The static water level in this well is now about 15 feet.

The New Mexico Bureau of Geology is preparing a Hydrogeology Map of the Sacramento Mountains.



Before thinning

After thinning

The CHAIRMAN. Thank you very much, Mr. White, for your testimony. I want to thank all the panelists for their testimony. And I will say this at the end of this hearing, too. If you have something else to add, as Mr. Galt wanted to add, that is certainly acceptable, and we will do that.

Now, I said at the outset that seniority has its privileges, but I am going to defer my questions so that others who represent this area much more closely than I do have a chance. And we will start with Mr. Daines for questions for 5 minutes.

Mr. DAINES. I guess that is home field advantage. Is that right?

The CHAIRMAN. That is in this case, yes.

Mr. DAINES. Well, thank you. And thank you for the outstanding testimony today, and for this very informed group of witnesses, and for what you have shared with us today.

I want to investigate here the comments that both Mr. Galt, Ms. Robinson, and Mr. Knox shared about population sage grouse and predation as a factor. And I think anybody who has grown up in Montana knows and when you watch populations, you look at predation, you look at weather, you also look at disease as populations go up and down as three important variables, amongst others.

But I was intrigued by the predation by other birds, including the raven, that was mentioned here. It seems to be the single most important factor, at least arguably, a very important factor in sage grouse populations. The raven and these other predatory birds are protected by the Federal Migratory Bird Treaty Act.



So we have two government statutes that potentially are at cross purposes with each other, and it seems like our Federal Government then blames humans as a primary cause versus looking at some of these naturally occurring processes in this very complex ecosystem.

How can the BLM redirect its effort toward predation? I would be interested in hearing any thoughts you might have. Ms. Robinson, do you have a thought on that?

Ms. ROBINSON. Well, I would just like to say that as a County Commissioner, I go to lots of meetings. And every time we bring up predators, and it is never, ever looked at. It is always completely ignored. Well, we do not have any control over predators, so we are not looking at predators. Well, if you look at the numbers, that is one of the big reasons of the decline in sage grouse is predators, but yet they are not even looking at any solutions because they are not admitting that there is a problem.

Mr. DAINES. Mr. Knox, do you have a thought on that, too?

Mr. KNOX. Yes, that is a very difficult issue to address. I have an example. When we were dealing with the riparian grazing issues along the Missouri River, we were told by one of the BLM employees, and he was quite frank about it. He said, even though most of the problems that you are faced with are caused by the dams upstream and the lack of natural flood stages, he said, there is very little we can do about them, but we can do something about you. So as individual ranchers, we feel that all the time.

And so, I do not have a good answer to that, but I would hope that maybe through this process we can at least get them to acknowledge that these acts are in opposition to each other, and we are the victims out here because of it.

Mr. DAINES. Mr. Galt?

Mr. GALT. Thank you, Congressman Daines. I just agree with my colleagues here. I mean, the National Technical Team did not take that up. That was one of our criticisms of the National Technical Team report. And as we sit on the Council, Governor Bullock's Council, on Sage Grouse Conservation Strategies, I mean, we are handed the document by the U.S. Fish and Wildlife Service. And below a certain line, everything below that line is really on the table for discussion. And predation, weather, things like that are below that line.

So your wildlife specialists are saying it is not a problem, but everybody that has come to that Council has said this is a serious issue, and we see it particularly with the people that live on the land and see it every day. And I just think you need to bring them to the table and say, why not.

Mr. DAINES. So you see that NTT, that data, that is one of the biggest flaws in it is eliminating these variables?

Mr. GALT. That is one flaw, yes.

Mr. DAINES. Is there another flaw?

Mr. GALT. Congressman Daines, Mr. Chairman, there are quite a few flaws with that.

Mr. DAINES. Do you want to give us another one?

Mr. GALT. I think that a big issue is that we are not really taking a look at what industry and what conservation groups and what members of the Farm Bureau and Stockgrowers have actually

done in mitigation standards since 2002, 2003, 2004. Montana's first comprehensive plan was done in 2005. We have not even had a chance to go back and look and analyze what mitigations that have been in place since then and what kind of activity they have had on sage grouse populations.

So we are sitting here basing data back on studies that were done early on before anybody really took heart in what was going on in the landscape, and we are saying that these are the problems. And the one study that was relied upon a lot used an unmitigated control area, and said these horrible things are going to happen. This unmitigated control area was supposed to be used as a comparison to areas with controls, yet that was not the case. The predictions were made of horrible decimation of the sage grouse. They have not come true. It is really tight.

Mr. DAINES. I have one quick question, Mr. White, and my time is up.

The CHAIRMAN. We will have the second round.

Mr. DAINES. OK. I will come back for the second round then. So little time, so many questions.

The CHAIRMAN. Yes. I recognize Mr. Lamborn from Colorado.

Mr. LAMBORN. Well, thank you, Mr. Chairman. Thanks for having this hearing. First, I would like to ask Mr. Galt a question. And on the committee, I am the Chairman of the Subcommittee on Energy and Mineral Resources, so I want to ask you an energy-related question. Would banning oil and gas activities on public lands help the sage grouse in any way? Why or why not?

Mr. GALT. It would not stop the coyotes, Congressman Lamborn. You know, there are some issues with oil and gas, and there are a lot of studies that would attribute that certain uncontrolled activities would impact the bird. So eliminating it all together would have a marginal perhaps impact indicated by the study.

Mr. LAMBORN. So marginal at most.

Mr. GALT. I think so.

Mr. LAMBORN. OK. And that is what I expected. Thanks for saying that.

Mr. Cebull, I have a question for you. You devoted considerable time in your written testimony to the high numbers of grizzly bears. The Federal Endangered Species Act is real clear about how to list a species, but is very vague when it comes to de-listing a species, so vague that it allows litigants from outside Montana, for instance, to fight the de-listing of wolves to the point where Congress had to step in.

Based on your experiences, does the law need to be improved when it comes de-listing so that better attention and resources could be concentrated on the remaining species that actually need help?

Mr. CEBULL. Representative Lamborn, Chairman Hastings, absolutely I think that we need to do something about de-listing. As I said, this has become a listing tool and not a management tool. The ultimate goal of the Endangered Species Act of 1973 was species recovery. In order to recover, you have to have population increase, and you then you have to get them off the list. We have only allowed, as you cited in your comments also, 1 percent of all these species being listed actually were taken off the list because of re-

covery. The rest were taken off, some of them were already extinct when they were listed. Some of them were taken off because they went extinct while they were listed. And so, there was a variety. But 1 percent, and to me that is not successful.

So that tells me that either the—and there are multiple flaws in the ESA that I cited. The management of the ESA through the process is not doing a good job of recovering, and the species, like the grizzly bear, that I personally can attest. I saw my last grizzly bear on Saturday night, and this is not an area that was historically known as grizzly bear range.

And I can attest that, in my opinion, that there are a lot of grizzlies. And talking to the biologists and the local people, there are a lot more grizzlies than there were. And I believe that they should have been de-listed and managed locally by the State a long time ago, so.

Mr. LAMBORN. I asked this question down in Casper. Is there an issue with animals being either introduced or maybe just found here and there in areas where they are not historically known to occur, and yet that becomes now something to be protected, even though historically that was not part of that animal's habitat?

Mr. CEBULL. I think that is absolutely correct, and it goes to the heart of this. And the sage grouse issue as critical habit is defined as where sage grouse might live, not necessarily where you would find them today. And I think that is the biggest issue with sage grouse.

Without a doubt, when you look at core grizzly bear habitat or what is listed as historic grizzly bear habitat, there are a lot of areas in Montana that have not had grizzlies in a long time that it is a wide swath of them now. And our ranch is one of those that has probably historically had grizzly bears. And, I mean, historically when the elk were out on the plains and the predators were out on the plains.

But for a long time there have been grizzlies moving that far out of the mountains because we are really 2 miles away from the timber that would be considered grizzly range.

Mr. LAMBORN. OK, thank you. Ms. Robinson, I would like to ask you a question. I assume that you go to associations like NACO where county commissioners from around the West are gathered together, and you talk with these folks. Are they concerned about the sage grouse listing, because that could affect 11 different Western States?

Ms. ROBINSON. Yes, Congressman. I am the Vice Chair of the Public Lands Committee for NACO, and I also am the Second Vice President, yes, Second Vice President of Western Interstate Region. And, yes, endangered species is a big concern.

We have a resolution that we just passed in July in Fort Worth talking about sage grouse. And I did not bring that, but I would be happy to get you a copy.

Mr. LAMBORN. What was the gist of it?

Ms. ROBINSON. I could not tell you off the top of my head. But the thing is, kind of with my testimony, we need not top down, but from grassroots efforts, and to deal with the people that are on the land with the sage grouse is better suited for the species rather than top down.

Mr. LAMBORN. Thank you.

The CHAIRMAN. Ms. Robinson, would you get that letter so we can have it as part of the record?

Ms. ROBINSON. Yes.

The CHAIRMAN. Please get that to us.

I thank the gentleman.

I recognize Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. For anyone on the panel, is it true that when a species is headed for listing, that recovery criteria are established so you know what amount of species will constitute recovery? Does anyone know? Mr. Cebull?

Mr. CEBULL. Mr. Chairman, Representative Lummis, during my research for this panel hearing, I actually did read that. The response to the 1 percent success rate of the ESA was the fact that there are targets with endangered species. Many of those targets are multiple decade targets where they are expecting stabilization and growth, but it might take decades to see that happen. So in my research, I did find that.

Mrs. LUMMIS. Are you aware of the goalpost ever moving? In other words, once a species reaches that criteria, the criteria was changed?

Mr. CEBULL. Yes, Representative. I think probably the most recent one that was very famous here was the wolves, and the fact that they were, in 2001, I believe, early on, that they were declared as being recovered. And then the goalpost kept moving as far as breeding pairs, number of wolves. And eventually it took us until congressional action to get the wolves off the list. It took years and years, and we had a tremendous amount of damage to our industry and our hunting industries because of the increasing number of wolves and livestock.

Mrs. LUMMIS. Mr. Cebull, what has happened to the low low elk herd? Do you know about the low low elk herd?

Mr. CEBULL. I am sorry, Representative, I do not know.

Mrs. LUMMIS. Mr. White, do you know anything about the low low elk herd?

Mr. WHITE. Thank you, Representative Lummis. The northern elk herd has been—I mean, that was up around 20,000 head, and I think it is down around 3,000, 4,000 now. From what I am hearing over in the low low, there are 1,700 to 1,500 elk where it was 5,000, 6,000, so.

Mrs. LUMMIS. And when you have depletions of ungulates, especially huntable ungulates, in those kind of proportions, do the number of hunting licenses that are issued drop?

Mr. WHITE. They do.

Mrs. LUMMIS. And what does that do to outfitters, guides, businesses that have thrived off of the hunting and recreation economy?

Mr. WHITE. Well, it has had a significant impact to local economies that many times in many places in the small communities in Central Montana, 70, 80 percent of their income is derived from that short hunting season. When you do not have the animals, you do not have the hunters, you do not have the income to the communities. Then those businesses, once flourishing, actually are gone.

Mrs. LUMMIS. Mr. White, are there people in Montana who fill their freezers with wild game and have that as their main protein source through the winter?

Mr. WHITE. They do.

Mrs. LUMMIS. Is that true also on the reservation, Mr. Whiteman?

Mr. WHITEMAN. Sorry. Could you repeat the question?

Mrs. LUMMIS. Are there tribal members on the reservation who use big game or wild meat as their main source of protein through the winter?

Mr. WHITEMAN. Yes.

Mrs. LUMMIS. And so, they are hunting. They are sustenance hunting. They are relying on hunting to feed their families.

Mr. WHITEMAN. Yes.

Mrs. LUMMIS. Is that true?

Mr. WHITEMAN. Yes.

Mrs. LUMMIS. Has the Endangered Species Act in any way, to your knowledge, interfered with the ability of Montanans, who rely on wild meat for food, to obtain adequate food from wild meat?

Mr. WHITEMAN. No, it has not.

Mrs. LUMMIS. Mr. Cebull, are you aware of any instances where that is true?

Mr. CEBULL. Representative Lummis, going back to your original question, the northern elk herd being an issue, that started out, and I will go back to when I was a kid back in the 1980s. We used to have a late season down in Gardner, and there was over 10,000 cow tags issued in Gardner in a given year because these were 2-day hunts. They went out. This was a great family tradition.

That hunt is completely gone now because the northern elk herd, as was cited earlier, is greatly diminished. So that being said, and understanding the pressure in the Madison Valley and western Montana, places that have large populations of wolves and grizzly bears, quite frankly, are doing a lot of predation on elk.

It absolutely is affecting hunting opportunities and affecting people's ability to harvest elk, for example. And so, I absolutely would say that is impacting people's ability to put protein and put game meat in their freezer.

Mrs. LUMMIS. For either Mr. Galt or Mr. Knox, could you give some quick examples of how litigation is affecting the efforts to recover species or the industries you are in? And I see that my time expired, so you know what I will do? I will save that question, so hold your thoughts on that. And if we have a second round, I will ask that again.

Thank you, Mr. Chairman. I yield back.

The CHAIRMAN. Thank you. We will have a second round. Mr. Cramer is recognized.

Mr. CRAMER. Thank you very much, Mr. Chairman, and thanks to each of the panelists here. Your testimony is quite compelling.

In North Dakota, we do not have a lot of sage grouse. We have some, and they continue to increase about 15 percent per year. But the greater fear that is driven by the ESA in North Dakota is this issue of critical habitat. And it creates sort of a growing uncertainty. Can any of you describe for me what it is that makes something a critical habitat to the Fish and Wildlife Service? Mr. Galt?

Mr. GALT. Mr. Chairman, Congressman Cramer, just from what I have learned on the Sage Grouse Council, they use a lot of analysis of bird populations and where those densities are heavier at their mating grounds than they are in other places. Those are kind of the dictum. Male lek attendance is a density issue that they drew the circles around and labeled those critical habitat.

And you do have critical habitat right in Bowman County, North Dakota that is right east of the Cedar Creek Anticline, one of the oldest developments in the State of Montana, that makes our Cedar Creek Anticline critical because of the connection between your population and populations otherwise in Montana.

Mr. CRAMER. Well, I get the sense from time to time that this critical habitat definition becomes broader by virtue not of population density, but the potential possibility somewhere down the road perhaps of population. And that is what concerns me is just how broadly can they define critical habitat.

And so I hear that fear a lot beyond Bowman County that, gee, our grass looks like theirs. Could they come and declare or determine this to be critical habitat as well.

I want to ask, and this may be getting to what Representative Lummis was getting at. If we were to buy into and join the goals of the Endangered Species Act, how is it that litigation, a litigation strategy, actually enhances the goals of the act, or does it not? Because one of the things that concerns me, and here we live in this era of budget crunch, and approach \$17 trillion debt, and the Federal Government trying to find more efficient ways to use money.

And it seems to me that if our goal was really conservation, that diverting that conservation money to litigation or defending against litigation does not seem like it would really meet the goal. Is that an accurate observation, and could anybody elaborate on it?

Mr. KNOX. We have not in our area been sued specifically over sage grouse or anything ESA related with sage grouse. But the grazing management plan for the National Monument was, of course, challenged by the environmental groups, Western Watersheds being one of them. And they, of course, are very enthusiastic about ESA listing for the sage grouse.

But it is a miserable, long, drawn-out process. We in the rural communities and agriculture, we always go back to the same well to raise money to defend ourselves from these sorts of things. And so, I guess the upshot is we came through the process all right, but we spent a lot of money, and money that would have been spent in our operations at home and staying at home in our communities. So that is, I guess, my view of it.

Mr. CRAMER. Do you think then along those lines, do you see this litigation wave, if you will, as a disincentive to do what comes naturally to us out here in the West, and that is to engage in voluntary conservation? In other words, are we robbing people of even their own natural instinct to be conservationists on the land if you are a stockman or a rancher?

Mr. KNOX. Yes, I believe that is definitely a part of it. As I included in my testimony, when leks were identified adjacent to Federal lands that were part of the monument designation, and showed up in the final management plan, it had a definite dampening effect on people's enthusiasm for cooperating with anyone

inventorying sage grouse, leks. So, yes, to your point, we have seen that.

Mr. CRAMER. Thank you for your testimony. And I will yield back the remaining seconds.

The CHAIRMAN. If I wait 5 seconds, it will be gone.

[Laughter.]

The CHAIRMAN. I will now recognize myself. I want to ask a question of all of the panelists. We have had a number of hearings on this, and what I am going to say has been alluded to by my colleagues, but it has also been alluded by you, about the litigious nature of implementing the Endangered Species Act.

Now, when we have hearings, the litigants say that the ESA is 99 percent effective because it saves endangered species. Now, from what I hear of you, you are all on the front lines of these species conversation. So in your view, is 99 percent an accurate number that the litigants said?

We will start with you. Yes or no, Ms. Robinson.

Ms. ROBINSON. Mr. Chairman, do you want just a yes or no, or do you want just—

The CHAIRMAN. Well, you can emphasize it if you would like. But I would like to have a yes or no.

Ms. ROBINSON. OK, no.

The CHAIRMAN. Yes. Mr. Knox?

Mr. KNOX. I would say no.

The CHAIRMAN. Mr. Galt?

Mr. GALT. I agree.

The CHAIRMAN. Yes. Mr. Cebull?

Mr. CEBULL. Chairman Hastings, no.

The CHAIRMAN. OK. And, Mr. Whiteman?

Mr. WHITEMAN. Yes.

The CHAIRMAN. OK. And, Mr. White?

Mr. WHITE. Mr. Chairman, no.

The CHAIRMAN. No. OK. Well, I wanted to kind of get that out because the ESA was first passed in 1973, so it has been roughly 4 years. And I am going to talk here in round numbers. And we have roughly in the United States about 1,500 listings, and it took 40 years to get that 1,500 listings.

But the mega settlement that I alluded to in 2011 has the potential of upwards of 750 to 800 listings. That means that in 6 years, which is the timeframe of the mega settlement, the listings could go up by 50 percent.

Do you think that with that burden, that transparency and good science can be applied to the next 700—and I will throw this out—if it was applied to the first 1,500? And I will ask Mr. Galt and Mr. Knox that question.

Mr. GALT. Thank you, Mr. Chairman. I do not think it could. I think that is part of the problem we are facing right now is there is not any good science on there, and we have a ticking clock from the sue and settle crowd to make decisions on all these species that science cannot get to.

The CHAIRMAN. OK. Mr. Knox, would you like to weigh in?

Mr. KNOX. Yes, I would agree with Mr. Galt on some of the definitions of species where there are sub species that have been listed

that really should not have been. And if we are going to talk about 700 more, I guess I would be mistrustful of the science.

The CHAIRMAN. And that kind of goes to the core of where our problem is because while I mentioned that ESA was passed initially in 1973, it has not been reauthorized as a law since 1988. That is 25 years ago. And I daresay if you walk down any town main street in Montana, probably anyplace that is affected by the Endangered Species Act or any law, and since we enforce a law that has not been reauthorized for 25 years, I daresay you would probably get anybody to even say yes.

But because of the process that we have to go through in Washington, DC when we appropriate any law, appropriate dollars to carry out any law, whether it has been reauthorized or not, it is de facto reauthorized. Now, that presents a real problem because in order to have a discussion on real reform, you have to have two sides that want to sit down and talk. But when one side, because of the de facto reauthorization of a law that I believe is flawed, you have a whole lot of difficulty trying to get people to sit down and talk.

And I just want to say that is one of the reasons we are having these hearings around the country and this working group so we can get input, because we need to break through that. People need to understand the impact this will have on our economy.

And, Mr. White, your circle was very good. Those are all parts of our economy and, frankly, our life whether you live in a rural America or urban America. But you cannot have these things unless you have these resources, and they are being greatly, greatly compromised because of a lack of trying to get things done. So I just wanted to point that out.

We are going to do a second round now, and I will recognize Mr. Daines first.

Mr. DAINES. Thank you, Mr. Chairman. As part of the brief that was pulled together for this hearing, I was struck by a fact here that the Department of Justice responded to this committee when asked for the litigious behavior and activity in the last 4 years as it relates to the ESA. In just the last 4 years, the Federal Government has defended more than 570 ESA related lawsuits, costing more than \$15 million in funds paid from the judgment fund. This is not the cost of the lawyers in the Federal Government defending the ESA. These are dollars that were given to the plaintiffs as part of the Equal Access to Justice Act. This is taxpayer dollars, so we are paying their legal fees.

Question: do the lawsuits from distant groups, like the Center for Biological Diversity, which they are the number one litigant. There 117 of these lawsuits that came from the Center for Biological Diversity. Do these lawsuits encourage or discourage voluntary efforts to conserve species? I would like to get some thoughts on that.

Lesley, you are in the middle of some of these activities. Is it encouraging or discouraging?

Ms. ROBINSON. I would say discourage. If you can work with the rancher and they do not have a fear of what is going to happen, then they are a lot more apt to work with you. And that is where the sage grouse are. They are right in the middle of ranches, so we know that is working. But I would say that there is a fear of it.



Mr. DAINES. Mr. Knox?

Mr. KNOX. I would say that it is also—it has made it more difficult in the relationship between ranchers and, for example, range conservationists, who we traditionally get along with pretty well, and the Bureau of Land Management, because some of these groups have the strategy to litigate and contest every aspect of a management plan, whether it is an ESA issue or some other kind of issue. And so, and the strategy is simple. Overwhelm the range people with paperwork so that they fall behind, they make a mistake, and then we can really nail them.

And so, when you are the rancher caught in the middle of this and basically, we just want to run our cows and enjoy our lifestyle in our communities, it has a dampening effect. It definitely does.

Mr. DAINES. Well, speaking of paperwork, we are going to talk about Mr. White's stack over there in a minute. But I was struck by the testimony as well that—reminding ourselves in Montana we have a sage grouse hunting season. It just opened up September 1, two-bird limit, four in possession. And also, we are transporting birds to Canada for transplant purposes. And I think just a reminder for all of us, the goal here is we are trying to find ways to ensure we keep the sage grouse off the ESA as conservationists, as sportsmen and women here in this State.

And in light of that, the need to reform the ESA, I would like to get thoughts from each of you, if you were President for a day and could wave a wand, and there were one or two things you would seek to reform in the ESA to take this 40-year-old law and bring it to 2013, what might that be?

And, Mr. White, given the fact you got a stack down there, maybe you could start that input.

Mr. WHITE. Thank you, Representative Daines. The litigation that you are speaking about on these lawsuits many times are compensated back to the environmental groups through the Equal Access to Justice Act. But these environmental groups do not have to post any kind of bond or anything. A 44-cent stamp will get them into the courtroom, and then if they prevail, they take that money and they turn around and sue again on another issue or another bird.

So I think some sort of bonding requirement and damage, some sort of estimate on the damage that could be caused by the litigation, and have the environmental group or those litigants post some sort of a bond, I think, would discourage a lot of these litigations.

Mr. DAINES. Great. Thanks, Mr. White. Who else? I only have 45 seconds. Who else has a thought? Mr. Galt and then Mr. Cebull?

Mr. GALT. I think two things, Mr. Chairman, Congressman Daines. You really need to bring people together, take a look at how they look at the whole habitat issue. It is hard for us to understand that the wildlife professionals can stand up and say hunting does not have an effect on the mortality of the bird. But we have got a habitat issue, and you cannot have a surface disturbance next to a highway.

And the second thing that I would like to add is that Congress, in the short term, really needs to take a look at that time schedule that is under effect on all of those species that are under the sue

and settle agreement and see if we cannot push that date back, because we are making decisions based on science that was done before mitigation even started to work. And we are going to make that decision poorly.

Mr. DAINES. OK. I am out of time. I want to enter into the hearing record, Mr. Chairman, some contents of the American Motorcycle Association, Richland Prairie Counties, Senator Jennifer Fielder, and the Yellowstone Valley Audubon Society.

The CHAIRMAN. Without objection, they will be part of the record. I recognize Mr. Lamborn from Colorado.

Mr. LAMBORN. Thank you, Mr. Chairman. Ms. Robinson, for your own county and the people you talk to from around the country, I would like to get your perspective. Recently, the Obama administration finalized a rule and ignored significant opposing comments, a 10th Circuit Court of Appeal opinion, and letters from Members of Congress, such as ourselves, on how it will conduct economic analysis for critical habitat designations. And their rule will require Federal agencies administering the ESA to only analyze the actual cost of the designation, while ignoring all other costs that are caused by the listing of a species.

Would it not be better to fully document the costs of the Endangered Species Act by analyzing its impact on, let us say, rural areas?

Ms. ROBINSON. Mr. Congressman, it definitely would be important for us for them to analyze all of the costs, because if you look at how many people we are feeding in Phillips County, and if you cut our grazing rates, then what is the step-down effect of that? How many people are not going to have food? How many people in our little town of Malta, how many businesses will go broke because of fewer ranchers on the land? There is such a trickle-down effect of one decision, and it all needs to be analyzed.

Mr. LAMBORN. Thank you. I agree. That should not be ignored.

Mr. White, Mr. Kieran Suckling, the Executive Director for the Center of Biological Diversity, was quoted in 2009 as saying, "When we stop the same timber sale three or four times running, the timber planners want to pull their hair out. They feel like their careers are being mocked and destroyed, and they are. So they become much more willing to play by our rules. Psychological warfare is a very underappreciated aspect of environmental campaigning."

Do you think that this litigation approach on timber sales has affected the health of our forests, possibly contributing to an unhealthy condition that we see with catastrophic wildfires?

Mr. WHITE. Representative Lamborn, I definitely agree. And actually what I did is when I submitted my written testimony, I put in there a study that was done on a pilot project down in California where they went in and they put in a test well and did well monitoring on the water table level below where they thinned the Ponderosa Pine. And after the thinning project, the next year the groundwater recovered 100 feet. The static groundwater below that thinning project is now sitting at 15 feet, and actually streams that were once dry with that overgrown forest have begun to run again.

So what I am saying is every time you have got a tree out there, each one of those drinks water, and when you start pulling that amount of water out of the ground with an overgrown forest, what

happens is it starves the next tree next to it and puts it in stress, and then creates a problem of that one more susceptible to disease. We have got a massive bug kill out in our forests. Almost 50 percent of the Beaverhead Deer Lodge National Forest is dead and dying.

We cannot cut those dead trees, and after they burn, we cannot even salvage those salvage burn trees after they have burned and destroyed all the wildlife habitat and erosion, streams, and everything. So I think it is quite out of control.

Mr. LAMBORN. OK. Thank you so much. That is amazing.

Mr. Cebull, one of the concerns of our committee is that the Federal Government should be incorporating more data from State and local governments and landowners. One example is from Garfield County, Colorado, where they spent millions counting and protecting sage grouse in their habitats. Yet the Fish and Wildlife Service has ignored them.

Should the Federal Government use more studies than what they are accepting right now? Should tribes, States, localities, and landowners not have more input on these Federal decisions?

Mr. CEBULL. Mr. Chairman, Representative Lamborn, absolutely they should, and that was a big, big focus of my testimony. And something I would like to say is that you get a lot more common sense the closer to the ground you get. The ESA is a 60,000 foot approach. It is coming. It is that top down centralized approach. When you get on the ground, things look a whole lot different than they do from 60,000, and common sense prevails. Whether it is the landowner, the rancher, or the local administration, it definitely prevails.

Mr. LAMBORN. OK, thank you. I am going to try to squeeze one more in. Mr. Knox, when these taxpayer funds go to the plaintiffs' attorneys, who bring these fish in a barrel type of lawsuits, do those monies ever get turned around and used for species and habitat protection, to your knowledge?

Mr. KNOX. No, I am sure not. I know, for example, that the Western Watersheds group uses that money to roll into more lawsuits. And that is consistently what they do, and I am fairly sure that other environmental groups are doing it.

Mr. LAMBORN. Thank you.

Mr. KNOX. Treating the law the same way and the money the same way.

The CHAIRMAN. I thank the gentleman. I recognize Mrs. Lummis.

Mrs. LUMMIS. Thank you, Mr. Chairman. I also want to thank Mr. Cramer for following up on my questions about litigation with Mr. Knox and Mr. Galt.

So I am going to go on with a question for Mr. Whiteman. I understand you are involved in coal mine reclamation. Can you tell me, if you are looking at a piece of land before it is mined, and then it is mined and reclaimed, is the reclaimed land capable of supporting the same species that were on the land before it was mined?

Mr. WHITEMAN. Yes.

Mrs. LUMMIS. And is that part of your obligation in terms of mine reclamation to reclaim it to a quality that existed before mine reclamation?

Mr. WHITEMAN. Yes.

Mrs. LUMMIS. Are you aware of any instances where the Endangered Species Act has prevented either coal mining or oil and gas development?

Mr. WHITEMAN. Yes. Not really what I know with other—let me see. In the beginning of the 2000s, when coal methane—it hindered production. That was brought to my attention about a week ago because I had friends, co-workers that worked in that area.

Mrs. LUMMIS. OK. Thank you, Mr. Whiteman.

Mr. GALT, are you aware of any instance where the Endangered Species Act prevented oil and gas development?

Mr. GALT. Mr. Chairman, Congresswoman Lummis, I would answer two ways. I think the concerns about the potential of the listing for the sage grouse has indeed slowed, if not removed, many acres of Federal land from the ability to be leased. And I would have to go back to my records, but I am particularly thinking of a sale in North Garfield County, Montana where Federal acres were removed over concerns about the bird in 2007 or 2008, quite a bit time ago.

Mrs. LUMMIS. OK.

Mr. GALT. Second, one of the areas in the States that does have a lot of interest in oil and gas development is along the east slope of the Rocky Mountains. That would be grizzly bear habitat. And I know companies that have worked in there have had a dickens of a time working with the various agencies in areas with listed species.

Mrs. LUMMIS. Mr. Galt, again for you, with regard to data collection and dissemination, if the Department of the Interior were compelled to release its data so that independent analysts could attempt to replicate the data that they used to make listing decisions, would that be a helpful thing?

Mr. GALT. Mr. Chairman, Congresswoman Lummis, I think it would be very helpful. And further than that, I think it would also be very important for the academics, if the study that they produce on taxpayer dollars used by the government to make widespread determinations, if that is the case, which it is, their data should be made public, too, and it is not. Thank you for that question.

Mrs. LUMMIS. Now, also, Mr. Galt, if Congress were to allow Montana and other Western States time to implement, track, and analyze conservation plans, without the threat of a court designated listing deadline, would that be a helpful thing?

Mr. GALT. Mr. Chairman, Congresswoman Lummis, I think so. When I started in this job in 2005, the ink was dry on the Montana Wildlife Conservation Strategy Book, and I cannot remember the name of it. But they had sage grouse, comprehensive sage grouse stipulations in that book that our members started to develop in 2005. The ink was not dry on that, and they were already saying that those stipulations were not good enough. And we have stipulations in the Wyoming plan that now people are saying are yet not good enough.

And I think we really need to find out if the ones in 2005 were really good because some of the studies are showing that what was thought to be a huge decimation of sage grouse in particular areas

in your States are seeing the largest lek densities in the State. And they are certainly back in robust numbers.

Mrs. LUMMIS. Now, for any of you, would it be reasonable for Congress to set some factors or criteria by which the U.S. Fish and Wildlife Service could rank order listing petitions based on imminent threat rather than using predictive models that reach forward for years, like trying to predict how global warming will affect species? Would that be helpful? Anyone?

Ms. ROBINSON. I think that would be very helpful. I do not know how you can do predictions on global warming not knowing what tomorrow brings as far as that. And there should not be listings based on predictions.

Mr. GALT. Mr. Chairman, Congresswoman Lummis, yes.

Mrs. LUMMIS. Thank you. Mr. Cebull?

Mr. CEBULL. Mr. Chairman, Congresswoman Lummis, I would also like to encourage you to include economic impacts in that listing in that rating.

Mrs. LUMMIS. Thank you very much. Mr. Chairman, I yield back. Thank you, panel.

The CHAIRMAN. I recognize Mr. Cramer.

Mr. CRAMER. Thank you, Mr. Chairman. And before I forget or run out of time, Mr. Chairman, I know that the record will open for 10 more days. But I would like to offer the written testimony of Lynn Helms, the Director of Industrial Commission and Department of Mineral Resources in North Dakota.

The CHAIRMAN. Without objection, it will be part of the record.

Mr. CRAMER. You know, one of my take-aways, and I am not surprised by it by listening to you all and being here, is that much like my State of North Dakota, you do not compromise quality of life for an improved standard of living. And you are to be commended for that. That is clear when you drive around this beautiful State of yours.

And this issue of consent decrees becoming law by virtue of liberal organizations suing a liberal administration and coming to a settlement in a liberal judge's chambers is very concerning to me. And I am wondering if any of you and your organizations that you belong to or associations have ever considered using sue and settle as an offensive tool instead of it always being a defensive tool. Because, quite frankly, Napoleon once said, "The logical conclusion of defense is defeat." And while our job is to create policy that does not encourage such a thing, I would be interested to know if you have ever considered using the tools that your opponents use against you.

Mr. WHITE. Representative, we have considered that under the Clean Air Act or the Clean Water Act as to what these fires are doing and erosion and stuff to our watersheds and stuff like that.

These environmental impact statements, whether they be draft or final, right in the front when they start on the draft environmental impact statement, it says that a lot of the information in here are estimates, speculation, and assumptions. Put into a modeling program and out the back end, you get a prediction.

And so, with that estimate and speculation and assumption, I believe that is the ESA. And that is all it is is people behind a desk creating models, putting in junk in the front and junk out the back.

We do not have the tools. Congress did not give us an organization the tools to go out and sue to try to get our way. All we are trying to do is keep what we have. We are not asking for anymore. It is incrementally being taken away from us in rural America, resource industries, everybody on the panel, counties losing tax base.

And one other thing. When Montana came into the Union, we did not get all our land under the Equal Footing Doctrine like the Eastern States. And so, that reduces our tax ability and our tax base within our State. So maybe transfer that land and dispose of that land back to the States might be a good idea, because I just do not think that the Federal Government is doing a good job of managing what they have, yet they go out through the Land and Water Conservation Fund and want to buy some more.

Mr. CRAMER. Right.

Mr. WHITE. And I just do not think that it is common sense, as was mentioned on the panel. Thank you.

Mr. GALT. Mr. Chairman, Congressman Cramer, we have not done that within our organization. We have engaged in two lawsuits in my tenure as executive director. Both of the times we have intervened in support of the government, in one case the State government, in the other case, the Federal Government.

So, we have a lot of projects at stake. We have a lot of time at stake. Making the decision to engage in litigation is very serious and a very big step for an organization as diverse as ours. But some of these NGO's, that is how they survive, and that is not how MPAs survive.

Mr. CRAMER. Anybody else?

Ms. ROBINSON. As a County Commissioner, economically it is just not feasible for counties to go into a lawsuit or for a rancher. And we have intervened in different lawsuits, but the bottom line is the money just is not there to do it.

Mr. KNOX. We are a small organization. I am representing the Farm Bureau today, but I also am involved with the Missouri River Stewards. And I would echo what Lesley has said. So far, we have had intervenor status and that sort of thing. And I think it goes to your point that we are playing defense, and we have talked about that.

The Farm Bureau, who I am representing here today, is, of course, a bigger, more effective organization. And they have sued over the listing of the wolves, to varying degrees of success. But some of it has been done, but I guess we are not as good at it as the other side.

Mr. CRAMER. I want to wrap up with this quick question. Should litigants have to have a direct personal interest in the outcome of a lawsuit before they can engage in it? I mean, you all have had to intervene from time to time. Should litigants not have the same obligation or same relationship?

Mr. WHITE. Representative, yes, definitely.

Mr. CRAMER. I think so, too. With that, I thank you, Chairman. I thank the panel. And I look forward to eating some bread and beef from Phillips County.

[Laughter.]

The CHAIRMAN. Well, thank you. Let me wrap this up because we had a lot of discussion today on the sage grouse. And I have

to tell you my first reaction when I heard about the potential listing of the sage grouse when it was described to me in this way. The sage grouse is endangered in 11 States covering 260,000 square miles. Now, my first thought was, if one is dealing in common sense, that is a pretty darn big area in 11 States to have a species be endangered.

To put that in perspective, that is nearly 260,000 square miles. Montana has a square mileage of, I think, around 147,000, so that just gives you the perspective of what this is. It cries for some sort of solution. But I just wanted to make that observation.

Mr. Cebull, you said there should be an economic analysis. I totally agree with you. You may or may not be aware that this administration finalized a rule ignoring that, even a 10th Circuit Court of Appeals rule on that.

Let me finish where I kind of started. I mentioned from the outset that I am from the Pacific Northwest where we have been greatly impacted, much longer, I think, than you are. I am not going to say exclusively, but certainly much longer. And I will tell you, and this is kind of a warning, it does not go away.

Two issues: the spotted owl. The spotted owl has caused a decline in timber harvests on Federal lands in Oregon, Washington, and California by a factor of 90 percent—90 percent. And now, we have discovered that it was not the lack of old growth that caused the demise, but rather a predator called the barred owl. So what is Fish and Wildlife solution? Shoot the barred owl. Now, that is not common sense. That is why this cries to be talked about.

The other issue is the salmon issue. We have spent billions of dollars, taxpayer dollars and rate payer dollars because all of it is paid by rate payers, Bonneville Power, billions of dollars to save the salmon. The salmon runs are coming back in greater numbers now on average in the last couple of years since records have been kept in 1938.

Yet there is an article in one of the Seattle newspapers talking again about removing four Snake River dams that generate—I forget how many megawatts of power, enough to do Seattle for about a year, to supposedly save the salmon. So these issues are not going to go away.

So my message to you in that regard is this: you communicate here with people in Montana. You have to extend that network much, much farther. Commissioner Robinson, you said you have talked to other county commissioners. My appeal to you—I am not going to tell you what to do—my appeal to you is to be much more aggressive in that regard. Do not leave it up to just the Western States. You have got to engage county organizations in other States, because it is coming.

Case in point: I remember several years ago when the issue of endangered species in the Permian Basin—you are familiar with the Permian Basin. It is an area that produces a lot of oil and natural gas, but because of new technologies, it may be even better. And my colleagues came up to me and said, boy, you have to do something about the Endangered Species Act. Now, I said this without trying to be flippant or anything, but I said, welcome to the club, because now you are part of this deal.

So my appeal to you, Mr. Galt, is you are part of this association, and I know your members compete against each other trying to get jobs. But you have one commonality: if you do not have a robust organization out there, you are not going to have jobs. I mean, it is as simple as that. So you need to communicate with other associations in other States. They have to be part of this.

Now, Texas settled. Not everybody was happy with that. But I guarantee you it is not going to go away in Texas. That was only one settlement. There will be others.

And finally, I will just say this, and this is not in relationship to the Endangered Species Act. But, Mr. White, you talked about the catastrophic wildfires and what it does to our renewable resources. Just for your information, we passed out just before the August district work period—all of us voted for it—a bill dealing with healthy forests. We think there is a solution there, and if you have not looked at that, I would invite you to.

So I want to thank especially the panelists. I thought the testimony was very thoughtful, the questions and answers. Well, the answers were maybe more than the questions. But nevertheless, I really want to thank you. And that is all going to be part of the record. I cannot emphasize. That is part of the record that we will buildup on.

And for any of you that are in the audience, obviously if you have something that you would like to weigh in on, pro or con. By the way, I should say this: the House Natural Resources Committee is a bipartisan committee. It is made up of Democrats and Republicans. We happen to be all Republicans, so we called this hearing. And, of course, we fully expected the Democrats to participate. And by the way, they are the minority party. They had a chance to have witnesses at the table.

They had an opportunity to do that, and they refused to have a witness here or to send a member of their party to this full committee hearing. So I just wanted to say that for the record.

But I will leave it open. If anybody here has contrary views of what you have heard today, we certainly welcome that, and you can go to [www.housenaturalresources.gov](http://www.housenaturalresources.gov), or whatever it is. You can find it, just go online.

So with that, again, I want to thank all of you, and you have been a very, very attentive audience. We appreciate that very much. Stay tuned because this issue is not going away. That is why we are having these field hearings. That is why we are having this working group made up of members from the eastern part of the United States so that when the political opportunity is right, we can move legislation hopefully that will correct what we all think are flaws in the ESA.

So with that, thank you all, the panel. I want to thank my colleagues for being here, and certainly thank the audience.

And with no further business, the committee stands adjourned.  
[Applause.]

[Whereupon, at 3:30 p.m., the committee was adjourned.]

